STATE OF NEW YORK

5318

2021-2022 Regular Sessions

IN SENATE

March 2, 2021

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the abandoned property law, in relation to requiring abandoned property escheat to the Indian nation or tribe that historically occupied the land or to nearest nation or tribe; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 200 of the abandoned property law is amended to read as follows:

§ 200. Escheated lands. All lands the title of which shall fail from a defect of heirs, shall revert, or escheat, to the [~~people~~] **Indian nation or tribe who historically occupied the property or if no such tribe or nation currently exists, to the nearest extant Indian nation or tribe. Such land shall be tribal land under the laws of the state**.

§ 2. Section 201 of the abandoned property law, as amended by chapter 310 of the laws of 1962, is amended to read as follows:

§ 201. Action for recovery of property. Whenever the attorney-general has good reason to believe that the title to, or right of possession of, any real property has vested in [~~the people of the state~~] **an Indian nation or tribe** by escheat whether from defect of heirs, alienage or otherwise, [~~or by conviction or outlawry for treason as provided in section eight hundred nineteen of the code of criminal procedure,~~] he **or she** may commence an action to recover the property.

§ 3. Section 202 of the abandoned property law, as amended by chapter 314 of the laws of 1962, is amended to read as follows:

§ 202. Parties to action. There may be made parties to such action, all persons who would have, might have or might claim to have any interest in or lien upon the premises so escheated or forfeited, at the time of such escheat or forfeiture, and all persons in possession of such real property. Where the names of the defendants are unknown, they may be designated as "unknown defendants." The provisions of law applicable to actions to recover real property shall apply to such actions, except that service of the summons shall not be deemed to be complete until,

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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pursuant to an order of the court, the summons together with a notice directed to the defendants setting forth the object of the action, a brief description of the land affected, the source and manner in and by which it is alleged that said real property shall have escheated or forfeited to [~~the people~~] an Indian nation or tribe, and the name or names of person or persons whose title or interest shall have so escheated or have been forfeited, shall have been published once in each week for four successive weeks in two newspapers designated in the order for such publication as most likely to give notice to the defendants to be served.

§ 4. Section 203 of the abandoned property law, as added by chapter 760 of the laws of 1944, is amended to read as follows:

§ 203. Effect of judgment in favor of [~~people~~] an Indian nation or tribe. A final judgment in favor of [~~the people~~] an Indian nation or tribe in an action authorized as set forth in section two hundred one of this article is conclusive as to the title of [~~the people~~] an Indian nation or tribe in and to the premises described in said judgment against any and all parties in said action, including unknown defendants, and against any and all persons claiming from, through or under such a party by title accruing after the filing of the judgment roll or after the filing in the office of the clerk of the county in which said real property or a part thereof is situated, a notice of the pendency of the action.

§ 5. Section 204 of the abandoned property law is REPEALED.

§ 6. Section 205 of the abandoned property law, as amended by chapter 524 of the laws of 2005, is amended to read as follows:

§ 205. Report by attorney-general. The attorney-general shall report to the commissioner of general services all the real property recovered by [~~the people~~] an Indian nation or tribe in any action brought pursuant to this article.

§ 7. Section 206 of the abandoned property law, as amended by chapter 60 of the laws of 1962, is amended to read as follows:

§ 206. Petition for release of escheated lands. 1. Where there is good reason to believe that real property shall have escheated to [~~the state~~] an Indian nation or tribe and final judgment shall not have been entered as hereinbefore provided, a petition for the release to the petitioner of any interest in real property believed to have escheated to [~~the state~~] such Indian nation or tribe by reason of the failure of heirs or the incapacity, for any reason except infancy or mental incompetency, of any of the petitioner's alleged predecessors in interest to take such property by devise or otherwise, or to convey the same or by reason of the alienage of any person, who but for such alienage would have succeeded to such interest, may be presented to the commissioner of general services within [~~forty~~] two years after such escheat. In any case in which the heirs were legally incapacitated by reason of infancy or mental incompetency, such petition may be presented to the commissioner of general services within twenty years after such escheat. Such petition may be presented:

a. By any person who would have succeeded to such interest but for his or her alienage or the alienage of another person, or

b. By the surviving [~~husband, widow~~] spouse, stepfather, stepmother or adopted child of the person whose interest has so escheated, or

c. By the purchaser at a judicial sale or sheriff's sale on execution, or

d. By an heir, devisee, assignee, grantee, immediate or remote, or executor of any person, who but for his or her death, assignment or

grant could present such petition, or the alleged grantee of any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for his **or her** alienage or a legal incapacity to take or convey the property so escheated, or

e. By a person having a contract to purchase made prior to the date of escheat with the person whose interest shall have escheated.

2. Such petition shall be verified by each petitioner in the same manner as a pleading in a court of record may be verified, and shall allege:

a. The name and residence of each person owning any interest in such real property immediately prior to the escheat;

b. The name and residence of each petitioner and the circumstances which entitle him **or her** to present such petition;

c. The name and place of residence of every person who would have succeeded to any such interest but for his **or her** alienage or the alienage of another or any other rule of legal incapacity hereinabove mentioned affecting an attempted transfer of such interest to such person or to or by any of his **or her** alleged predecessors in interest;

d. The description and value, at the date of the verification of the petition, of such real property sought to be released;

e. The description and value, at the date of the verification of the petition, of all the property of every such owner, which shall have escheated to [~~the people of the state~~] **an Indian nation or tribe** by reason of failure of heirs or alienage and which shall not then have been released or conveyed by the state;

f. The name and residence of each person having or claiming an interest in such real property at the date of the verification of the petition and the nature and value of such interest;

g. Any special facts or circumstances by reason of which it is claimed that such interest should be released to the petitioner;

h. The name and residence of each person in possession or occupation of the premises and the nature, if any, of the interest of such person;

i. The name and residence of each person having filed a protest with the commissioner of general services under the provisions of section two hundred ten **of this article**.

Such petition may be filed within sixty days after its verification with the office of general services.

§ 8. Section 207 of the abandoned property law, as amended by chapter 60 of the laws of 1962, is amended to read as follows:

§ 207. Proceedings on receipt of petition. Prior to the presentation of such petition, the petitioner shall cause to be personally served upon each person who would have succeeded to any interest in said land but for the alienage of such person or another or for any other rule of legal incapacity hereinbefore mentioned affecting an attempted transfer of such interest of such person, and each person in possession or occupation or who has filed a protest under section two hundred ten **of this article**, whose names and places of residence are known and cause to be published in a newspaper published in each county in which any part of said land is situated, once in each week for three successive weeks as to those whose names and places of residence are unknown, a notice, in form adopted or approved by the commissioner, directed to such persons. Such notice shall state the date on which such petition shall be filed with the office of general services, the nature of the application, a description of the property affected and the name of the person or persons whose interest or interests shall have escheated to [~~the people~~

[~~of the state of New York~~] an Indian nation or tribe. Such notice shall also provide that any person or persons having a claim or right to said property equal to or superior to the right of the petitioner may file a remonstrance with the said commissioner on or before the date of said filing against the granting of such petition and for the granting of a release to such person or persons. Proof of service and of publication as aforementioned shall be filed with the petition. The commissioner may take proof of the facts alleged in said petition, by written or oral evidence, whether or not a sale or release of said property was theretofore made, the value of the property to be released, and such other facts as in his or her judgment are necessary to determine the matter. If a remonstrance shall have been presented, the commissioner may take proof of the issues raised thereby and the relief therein asked. The commissioner may, as a condition of hearing the matter, require the petitioner or any remonstrant to produce witnesses or advance the expense of producing them.

§ 9. Section 208 of the abandoned property law, as amended by chapter 60 of the laws of 1962, is amended to read as follows:

§ 208. Release. 1. The commissioner shall make his or her determination and enter an order accordingly. The commissioner may agreeably to the best interest of the [~~state~~] the Indian nation or tribe and in his or her discretion, if he or she deems it just to all persons interested, execute in the name of the [~~state~~] Indian nation or tribe, a release on such terms and conditions as the commissioner deems just, releasing to such person or persons as he or she shall have determined entitled thereto the interest of the [~~state~~] Indian nation or tribe in such real property so sought to be released.

2. A conveyance so made to any such person who is a parent, child, surviving [~~husband or widow~~] spouse of any such owner of any interest therein immediately prior to the escheat, or the heirs-at-law of any such surviving [~~husband or widow~~] spouse, or the alleged grantee or any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for a legal incapacity to take or convey the property so escheated shall be without consideration, if the value, at the date of the petition, as determined by the commissioner, of all property of any such owner escheated to [~~the state~~] an Indian nation or tribe and not conveyed or released by the state, shall not exceed one hundred thousand dollars, and of the property sought to be released shall not exceed ten thousand dollars, except that any and all expenses incurred by the state or relevant Indian nation or tribe in an action to recover the property escheated or in any action pertaining thereto, or otherwise relating to the escheated property shall be paid by such person. Where however, the value of the property sought to be released shall exceed the sum of ten thousand dollars the commissioner may release the same to such person upon the payment of the appraised value in excess of ten thousand dollars and in addition thereto the expenses incurred by the state or relevant Indian nation or tribe in an action to recover the property as aforementioned.

3. The release shall contain a brief recital of the determinations required to be made by the commissioner on the hearing of the petition, remonstrance or remonstrances, and of all the terms and conditions on which the release is made.

§ 10. Section 210 of the abandoned property law, as amended by chapter 60 of the laws of 1962, is amended to read as follows:

§ 210. Protest against release. Any person may file, at any time, with the commissioner, a protest, stating his **or her** name, residence and post-office address, against the release by the state of any interest of [~~the people of the state~~] **an Indian nation or tribe** acquired by escheat, in any real property described in such protest.

§ 11. Section 211 of the abandoned property law, as amended by chapter 60 of the laws of 1962, is amended to read as follows:

§ 211. Lands held under written contract. Where lands have been escheated to [~~the state~~] **an Indian nation or tribe** and the person last seized was a citizen or capable of taking and holding real property the commissioner shall fulfill any contract made by such person or by any person from whom his **or her** title is derived, in respect to the sale of such lands, so far only as to convey the right and title of the state, pursuant to such contract, without any covenants of warranty or otherwise, and shall allow all payment which may have been made on such contracts. If any part of such escheated land has been occupied under a verbal agreement for the purchase thereof, and the occupants have made valuable improvements thereon, such agreement shall be as valid and effectual as if it were in writing.

§ 12. Section 212 of the abandoned property law, as amended by chapter 760 of the laws of 1944, is amended to read as follows:

§ 212. Escheated lands subject to trusts and incumbrances. Lands escheated to [~~the state~~] **an Indian nation or tribe** shall be held subject to the same trusts and incumbrances to which they would have been subject if they had descended, except that where the owner or beneficiaries of such trusts or the holders of such incumbrances have been made parties to an action brought under section two hundred one **of this article**, such land shall be subject only to trusts and incumbrances of record in the county in which the land is located prior to the filing of notice of pendency of action authorized under section two hundred one **of this article**.

§ 13. Section 213 of the abandoned property law is amended to read as follows:

§ 213. Condemnation awards as interest in real property. An interest in real property escheated to [~~the state~~] **an Indian nation or tribe** shall for the purposes of this article, be deemed to include any and all awards heretofore or hereafter made in condemnation proceedings against such escheated lands and all the provisions of this article shall apply to the release and assignment of such awards with the same force and effect as to the release and conveyance of an interest in real property.

§ 14. Section 214 of the abandoned property law, as added by chapter 760 of the laws of 1944, is amended to read as follows:

§ 214. Receiver. At any time during the pendency of said action pursuant to section two hundred one **of this article**, the court may upon application therefor appoint a receiver to conserve said property and to receive the rents, income and profits therefrom during the pendency of the action. The rents, income and profits so received, after the payment of the expenses of such receivership, shall be paid over to such party or parties as shall be determined in the final judgment to be entitled to possession of said property and in the event that [~~the people are~~] **an Indian nation or tribe** adjudged entitled thereto, shall be directed to be paid into the [~~state~~] treasury **of the Indian nation or tribe**.

§ 15. Section 215 of the abandoned property law is REPEALED.

§ 16. This act shall take effect immediately.