STATE OF NEW YORK

7833

IN SENATE

January 12, 2022

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

AN ACT to amend the environmental conservation law, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses; and to amend a chapter of the laws of 2021 amending the environmental conservation law relating to permitting kelp cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses, as proposed in legislative bills numbers S. 6532-A and A. 7547-A, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses

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

Section 1. The fourth undesignated paragraph of section 1 of a chapter of the laws of 2021 amending the environmental conservation law relating to permitting kelp cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses, as proposed in legislative bills numbers S.6532-A and A.7547-A, is amended to read as follows:

States including Connecticut, Massachusetts, Maine, and Rhode Island have already established kelp and commercial seaweed aquaculture programs. In New York, there is an opportunity to promote this industry by providing access for kelp **and other types of seaweed** aquaculture to state owned underwater lands ceded to Suffolk County.

§ 2. Subdivisions 1, 2, 7, 8, 9 and 10 of section 13-0302 of the environmental conservation law, as amended by a chapter of the laws of 2021, amending the environmental conservation law relating to permitting kelp cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses, as proposed in legislative bills numbers S.6532-A and A.7547-A, are amended to read as follows:

1. Underwater lands ceded to county of Suffolk. All the right, title and interest in which the people of the state of New York have in and to the lands under water of Gardiner's and Peconic bays in the county of Suffolk, except underwater lands within one thousand feet of the high water mark is hereby ceded to such county, for the purposes of shellfish

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

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or [~~kelp~~] **seaweed** cultivation, to be managed and controlled by such county, provided that such lands shall revert to the state when they shall cease to be used for shellfish **or seaweed** cultivation. For the purposes of this section, the term "Gardiner's and Peconic bays" shall mean the waters of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum island to Goff point at the entrance of Napeague harbor.

2. Ratification. The grant of lands under the waters of Gardiner's and Peconic bays, by the commissioners of shell fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid, are hereby ratified and confirmed. Any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the state or are subject to tax deed by the county of Suffolk shall be available to the county for leasing pursuant to this section. All other lands under such waters, which pursuant to such chapters, have escheated or reverted to the state, are hereby ceded to Suffolk county for the purposes of the cultivation of shellfish **or seaweed**, subject to existing valid grants and easements; provided however, that nothing in this section shall interfere with the right of the commissioner of general services to grant lands and easements under water to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life.

7. Leases for [~~kelp~~] **seaweed** cultivation. [~~a.~~] Suffolk county may lease lands under water ceded to it by the state for the purpose of [~~kelp~~] **seaweed** cultivation, provided if no such leases have been executed by December thirty-first, two thousand thirty-one, such authority to lease pursuant to this section shall terminate. Nothing shall preclude the county from issuing a single lease to an applicant for both shellfish and [~~kelp~~] **seaweed**, provided that the application complies with all the requirements of this section. For the purposes of this section, [~~"kelp"~~] **"seaweed"** means any [~~of the brown seaweeds of the order of Laminariales~~] **marine macroalgae that is native or indigenous to the marine and coastal district and** approved by the commissioner for cultivation in the waters of Gardiner's and Peconic bays.

[~~b.~~] **a.** Leases may be issued only within areas designated as [~~kelp~~] **seaweed** cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.

[~~c.~~] **b.** No lease shall be granted, except upon written application on forms furnished by the county of Suffolk, and properly executed and signed by the applicant.

[~~d.~~] **c.** Before a lease is approved, notice shall be provided for at least two months by posting such notice at the [~~bureau~~] **division** of marine resources in the department, the office of the county clerk, and the office of the town clerk in which all or any part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the county. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the office of the county clerk.

[~~e.~~] **8. Establishment of seaweed cultivation zones.** Before leasing or using the lands hereby ceded to it for [~~kelp~~] **seaweed** cultivation, the county of Suffolk shall cause an accurate survey to be made of such lands, and a map or maps to be prepared therefrom. Such map or maps shall establish [~~kelp~~] **seaweed** cultivation zones within Gardiner's and Peconic bays. Such map or maps shall be approved by local law. After such map or maps have been adopted, the county shall have the authority to issue leases for [~~kelp~~] **seaweed** cultivation within the [~~kelp~~] **seaweed** cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

[~~f.~~] **a.** Underwater lands within one thousand feet of the high water mark shall not be included in a [~~kelp~~] **seaweed** cultivation zone.

[~~g.~~] **b.** Underwater lands where bay scallops are produced regularly and harvested on a commercial basis shall not be included in a [~~kelp~~] **seaweed** cultivation zone.

[~~h.~~] **c.** Underwater lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking and/or tonging harvesting shall not be included in a [~~kelp~~] **seaweed** cultivation zone.

[~~i.~~] **d.** Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries shall not be included in a [~~kelp~~] **seaweed** cultivation zone.

[~~j.~~] **9. Regulations for seaweed cultivation.** The county shall, by local law, before leasing any such underwater lands, adopt regulations governing:

[~~(i)~~] **a.** applications for leases;

[~~(ii)~~] **b.** notices to be given;

[~~(iii)~~] **c.** the form and terms of leases;

[~~(iv)~~] **d.** standards for the approval or denial of leases;

[~~(v)~~] **e.** administration of leases;

[~~(vi)~~] **f.** the transfer or renewal of leases;

[~~(vii)~~] **g.** marking grounds and testing;

[~~(viii)~~] **h.** fees;

[~~(ix)~~] **i.** recording of leases;

[~~(x)~~] **j.** bonds; and

[~~(xi)~~] **k.** such other matters as are appropriate to the leasing program.

[~~k.~~] **10. Department authority over seaweed cultivation.** Notwithstanding any of the provisions of this section:

[~~(i)~~] **a.** any person engaging in the cultivation or harvesting of [~~kelp~~] **seaweed** in a [~~kelp~~] **seaweed** cultivation zone pursuant to this section shall obtain all permits required by this chapter;

[~~(ii)~~] **b.** the department [~~shall~~] **may** regulate and control the use of certain types of vessels and equipment for harvesting [~~kelp~~] **seaweed**, requirements for reseeding, the right to enter upon such leased lands, and enforce all other applicable state laws relating to said underwater lands; and

[~~(iii)~~] **c.** any person engaging in the cultivation or harvesting of [~~kelp~~] **seaweed** in a [~~kelp~~] **seaweed** cultivation zone pursuant to this section shall [~~receive approval from the commissioner~~] **obtain a permit in accordance with section 13-0316 of this title**.

[~~l.~~] **11.** Duties of the county clerk. Leases issued pursuant to this section shall be recorded in the office of the county clerk in the manner and form to be determined by local law as provided in subdivision five of this section.

[~~9.~~] 12. Summary proceedings. Upon the failure of a lessee to pay the rental on any date due under the terms of the lease or upon revocation as provided for by local law pursuant to subdivision five or seven of this section, the county may, after written notice to the lessee declare the lease cancelled as of the date set forth in such notice, and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the real property actions and proceedings law shall apply and govern the procedure in such case.

[~~10.~~] 13. Disposition of fees and rents. All fees and rents received shall be deposited into the general fund of the county. However, in the alternative, nothing shall prohibit the county of Suffolk, by local law, from establishing a special fund for the promotion of aquaculture where such fees and rents shall be deposited.

§ 3. Subdivision 10 of section 13-0302 of the environmental conservation law, as added by chapter 322 of the laws of 2016, is amended to read as follows:

[~~10.~~] 14. Suffolk county shall be authorized to allow the underwater lands at Gardiner's and Peconic Bays within the shellfish cultivation zone to be used for the implementation of a pilot program to conduct research and scientific assessment of the feasibility of seaweed cultivation. Such pilot program shall be limited to persons holding a lease from Suffolk county for shellfish cultivation and shall be limited to a total of five acres of such cultivation zone provided that any one person may be authorized to conduct seaweed cultivation on no more than one acre of the lease. Suffolk county shall provide a report to the legislature and the department on the pilot program no later than January first, two thousand twenty-six.

§ 4. Notwithstanding the provisions of article 5 of the general construction law, the provisions of subdivision 10 of section 13-0302 of the environmental conservation law, as amended by section three of this act, are hereby revived and shall continue in full force and effect as such provisions existed on the day before the date of a chapter of the laws of 2021, amending the environmental conservation law relating to permitting kelp cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses, as proposed in legislative bills numbers S.6532-A and A.7547-A, takes effect.

§ 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021, amending the environmental conservation law relating to permitting kelp cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses, as proposed in legislative bills numbers S.6532-A and A.7547-A, takes effect; provided that the amendments to subdivision 10 of section 13-0302 of the environmental conservation law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.