

S. 1455--A

A. 1408--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

January 7, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to local tidal wetlands protection

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 25 of the environmental conservation law is amended
2 by adding a new title 5 to read as follows:
3 TITLE 5
4 LOCAL IMPLEMENTATION
5 SECTION 25-0501. LOCAL TIDAL WETLANDS PROTECTION PROCEDURES.
6 25-0503. TRANSFER OF FUNCTION TO COUNTY; SUPERSESSION BY DEPART-
7 MENT.
8 25-0505. EXEMPTION FROM LOCAL IMPLEMENTATION.
9 25-0507. RESERVATION OF LOCAL JURISDICTION.
10 25-0509. RELATIONSHIP TO OTHER LAWS.
11 S 25-0501. LOCAL TIDAL WETLANDS PROTECTION PROCEDURES.
12 1. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND TWELVE, EACH LOCAL
13 GOVERNMENT MAY ADOPT, AMEND, AND, UPON THE FILING OF THE APPROPRIATE
14 TIDAL WETLANDS MAP, IMPLEMENT A TIDAL WETLANDS PROTECTION LAW OR ORDI-
15 NANCE IN ACCORDANCE WITH THIS ARTICLE TO BE APPLICABLE TO ALL TIDAL

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

LBD03735-02-2

1 WETLANDS WHOLLY OR PARTIALLY WITHIN ITS JURISDICTION. NO TIDAL WETLANDS
2 PROTECTION LAW OR ORDINANCE ADOPTED BY A COUNTY PURSUANT TO THIS SECTION
3 SHALL BE APPLICABLE WITHIN THE BOUNDARIES OF ANY CITY, TOWN OR VILLAGE
4 WHICH HAS ADOPTED AND IS IMPLEMENTING A LOCAL TIDAL WETLANDS PROTECTION
5 LAW OR ORDINANCE CONSISTENT WITH THIS ARTICLE.

6 2. SUCH TIDAL WETLANDS PROTECTION LAW OR ORDINANCE MAY BE IN SUCH FORM
7 AND WITH SUCH PROCEDURES PRESCRIBED AS MAY BE DETERMINED BY THE LOCAL
8 GOVERNMENT ADOPTING THE SAME, OR IT MAY SET FORTH THE PROCEDURES AND
9 CONCEPTS CONTAINED IN THIS ARTICLE; PROVIDED, HOWEVER, THAT NO LOCAL
10 TIDAL WETLANDS PROTECTION LAW OR ORDINANCE ENACTED PURSUANT TO SUBDIVI-
11 SION ONE OF THIS SECTION SHALL BE LESS PROTECTIVE OF TIDAL WETLANDS OR
12 EFFECTIVENESS OF ADMINISTRATIVE AND JUDICIAL REVIEW, THAN THE PROCEDURES
13 SET FORTH IN THIS ARTICLE, NOR SHALL SUCH LOCAL LAW OR ORDINANCE AFFECT
14 THE ACTIVITIES EXEMPTED FROM PERMIT BY SECTION 25-0401 OF THIS ARTICLE.

15 3. ADOPTION BY A LOCAL GOVERNMENT, PURSUANT TO THIS ARTICLE, OF A
16 LOCAL TIDAL WETLANDS PROTECTION LAW OR ORDINANCE BY REFERENCE TO THE
17 PROCEDURES AND CONCEPTS SET FORTH IN THIS SECTION SHALL BE SUFFICIENT IF
18 REFERENCE IS MADE TO THE PROCEDURES AND CONCEPTS OF THIS ARTICLE WITH
19 EXCEPTIONS, ADDITIONS, AND MODIFICATIONS THERETO NOTED; AND THE
20 ADOPTION, ONCE EFFECTED, SHALL INCLUDE SUBSEQUENT STATUTORY AMENDMENTS
21 TO THIS ARTICLE AS AFORESAID; SUBJECT, AGAIN, TO EXCEPTION, ADDITION, OR
22 MODIFICATION BY SUCH MUNICIPALITY, WITHOUT TIME LIMITATION. AT ANY TIME
23 AFTER A LOCAL ADOPTION OF THE PROCEDURES CONTAINED IN THIS ARTICLE, A
24 LOCAL GOVERNMENT SUBJECT TO THIS SECTION MAY RESCIND ITS ADOPTION THERE-
25 OF AND SIMULTANEOUSLY ADOPT A LOCAL TIDAL WETLANDS PROTECTION PROCEDURE
26 IN ACCORDANCE WITH SUBDIVISIONS 1 AND 2 OF THIS SECTION.

27 4. IF A CITY, TOWN OR VILLAGE FAILS TO ADOPT AND IMPLEMENT A TIDAL
28 WETLANDS PROTECTION LAW OR ORDINANCE IN ACCORDANCE WITH THIS ARTICLE BY
29 THE DATE THE APPLICABLE TIDAL WETLANDS MAP IS FILED BY THE DEPARTMENT,
30 IT SHALL BE DEEMED TO HAVE TRANSFERRED THE FUNCTION TO THE COUNTY IN
31 ACCORDANCE WITH SECTION 25-0503 OF THIS TITLE. IF THE COUNTY FAILS WITH-
32 IN NINETY DAYS AFTER THE DATE OF FILING OF THE APPLICABLE TIDAL WETLANDS
33 MAP OR BY SEPTEMBER FIRST, TWO THOUSAND TWELVE, WHICHEVER IS LATER, TO
34 ADOPT AND IMPLEMENT A TIDAL WETLANDS PROTECTION LAW OR ORDINANCE IN
35 ACCORDANCE WITH THIS ARTICLE, IT SHALL BE DEEMED TO HAVE TRANSFERRED THE
36 FUNCTION TO THE DEPARTMENT. WITHIN THIRTY DAYS AFTER THE ADOPTION OF A
37 TIDAL WETLANDS PROTECTION LAW OR ORDINANCE PURSUANT TO THIS ARTICLE, THE
38 LOCAL GOVERNMENT SHALL NOTIFY THE DEPARTMENT THEREOF, UNDER SUCH TERMS
39 AND CONDITIONS AS THE DEPARTMENT MAY PRESCRIBE, TOGETHER WITH ITS TECH-
40 NICAL AND ADMINISTRATIVE CAPACITY TO ADMINISTER THE ACT. FAILURE OF A
41 LOCAL GOVERNMENT TO GIVE SUCH NOTICE SHALL CONSTITUTE A TRANSFER OF
42 FUNCTION PURSUANT TO THIS SUBDIVISION AND SECTION 25-0503 OF THIS TITLE.

43 5. A LOCAL GOVERNMENT OR THE DEPARTMENT SHALL HAVE THE RIGHT, IN ITS
44 REGULATION OF TIDAL WETLANDS WITHIN ITS JURISDICTION, TO CHARGE SUCH
45 FEES AND EXPENSES TO AN APPLICANT FOR OFFICIAL ACTION AS SHALL ENABLE IT
46 TO RECOVER THE COSTS INCURRED BY REASON OF SUCH APPLICATION.

47 6. ANY LOCAL GOVERNMENT WHICH DEFAULTS OR TRANSFERS ITS AUTHORITY
48 PURSUANT TO SUBDIVISION FOUR OF THIS SECTION OR SECTION 25-0503 OF THIS
49 TITLE, MAY RECOVER SUCH AUTHORITY AT ANY TIME BY ADOPTING A LOCAL TIDAL
50 WETLAND PROTECTION LOCAL LAW OR ORDINANCE CONSISTENT WITH THIS ARTICLE
51 AND NOTIFYING THE COUNTY AND THE DEPARTMENT OF THE ADOPTION. SUCH NOTICE
52 SHALL BE GIVEN BY CERTIFIED MAIL WITHIN TEN DAYS OF THE ADOPTION THERE-
53 OF. SUCH LOCAL LAW OR ORDINANCE SHALL NOT BECOME EFFECTIVE IN LESS THAN
54 SIXTY NOR MORE THAN ONE HUNDRED DAYS FROM THE ADOPTION THEREOF.

1 7. THE TECHNICAL SERVICES OF THE DEPARTMENT SHALL BE MADE AVAILABLE TO
2 MUNICIPALITIES, ON A FEE BASIS, IN THE IMPLEMENTATION OF THE PROCEDURE
3 SET FORTH IN THIS SECTION.

4 S 25-0503. TRANSFER OF FUNCTION TO COUNTY; SUPERSESSION BY DEPARTMENT.

5 1. IN THE EVENT THAT A TOWN, VILLAGE, CITY OR COUNTY SHALL CERTIFY IN
6 WRITING, AS PROVIDED IN THIS SECTION, THAT IT DOES NOT POSSESS THE TECH-
7 NICAL CAPACITY OR THE PROCEDURES TO EFFECTIVELY CARRY OUT THE REQUIRE-
8 MENTS OF THIS TITLE, SUCH LOCAL FUNCTION SHALL BE TRANSFERRED TO THE
9 COUNTY OR THE DEPARTMENT, AS THE CASE MAY BE. THE CERTIFICATION OF THE
10 TOWN, VILLAGE OR CITY SHALL BE BY CERTIFIED MAIL TO THE CHIEF EXECUTIVE
11 OFFICER OF THE COUNTY, OR, IN THE CASE OF A COUNTY, TO THE COMMISSIONER.

12 2. IN THE EVENT THAT THE COMMISSIONER SHALL FIND THAT A LOCAL GOVERN-
13 MENT DOES NOT POSSESS THE TECHNICAL CAPACITY OR THE IMPLEMENTED PROCE-
14 DURES TO EFFECTIVELY CARRY OUT THE REQUIREMENTS OF THIS TITLE, AND THAT
15 HIS OR HER FAILURE TO ACT WILL ENTAIL A DEFAULT, OR THE POTENTIAL OF A
16 DEFAULT, IN TIDAL WETLANDS REGULATION, THE COMMISSIONER MAY SUPERSEDE
17 THE LOCAL GOVERNMENT AND ORDER, ALTERNATIVELY, EITHER THAT THE LOCAL
18 FUNCTION BE TRANSFERRED TO THE COUNTY, OR THAT THE DEPARTMENT ITSELF
19 UNDERTAKE THE LOCAL FUNCTION, ALL TO THE EXTENT NECESSARY TO CARRY OUT
20 THE PURPOSES OF THIS ARTICLE. THE SUPERSESSION OF THE LOCAL GOVERNMENT
21 SHALL BE BY ORDER OF THE COMMISSIONER SENT, BY CERTIFIED MAIL, TO THE
22 CHIEF EXECUTIVE OFFICER OF THE LOCAL GOVERNMENT INVOLVED.

23 3. IN THE EVENT OF TRANSFER OR SUPERSESSION UNDER SUBDIVISION 1 OR 2
24 OF THIS SECTION, SUBSEQUENT PROCEEDINGS SHALL BE IN ACCORDANCE WITH THE
25 FURTHER REQUIREMENTS OF THIS ARTICLE.

26 S 25-0505. EXEMPTION FROM LOCAL IMPLEMENTATION.

27 THE COMMISSIONER, BY RULE, MAY EXEMPT FROM LOCAL IMPLEMENTATION UNDER
28 THIS TITLE THOSE TIDAL WETLANDS WHICH, BY REASON OF THEIR SIZE OR
29 SPECIAL CHARACTERISTICS OF UNIQUE ENVIRONMENTAL VALUE OR BY REASON OF
30 COMMON CHARACTERISTICS, ARE APPROPRIATELY TO BE ADMINISTERED PURSUANT TO
31 THIS ARTICLE BY THE DEPARTMENT ALONE. SUCH RULE, BASED UPON FINDINGS OF
32 FACT MADE AFTER PUBLIC HEARING, MAY RELATE TO CLASSES OF WETLANDS BASED
33 ON SIZE OR PARTICULAR CHARACTERISTICS, OR TO PARTICULAR WETLANDS THE
34 CHARACTERISTICS OF WHICH MAKE THEM SUBJECT TO THE EXERCISE OF THE
35 COMMISSIONER'S DISCRETION PURSUANT TO THIS SECTION. THE COMMISSIONER
36 SHALL MAKE AN ORDER TO SUCH EFFECT IN EACH SUCH INSTANCE AND SEND A
37 CERTIFIED COPY THEREOF TO THE EXECUTIVE OFFICER OF EACH LOCAL GOVERNMENT
38 AFFECTED THEREBY WITHIN TEN DAYS OF HIS OR HER SIGNING THE SAME; SUCH
39 ORDER SHALL NOT TAKE EFFECT UNTIL FORTY DAYS AFTER SUCH SIGNING.

40 S 25-0507. RESERVATION OF LOCAL JURISDICTION.

41 EXCEPT AS PROVIDED IN THIS ARTICLE, JURISDICTION OVER ALL AREAS WHICH
42 WOULD QUALIFY AS TIDAL WETLANDS IS RESERVED TO THE CITY, TOWN OR VILLAGE
43 IN WHICH THEY ARE WHOLLY OR PARTIALLY LOCATED, AND THE IMPLEMENTATION OF
44 THIS ARTICLE WITH RESPECT THERETO IS THE RESPONSIBILITY OF SUCH CITY,
45 TOWN OR VILLAGE, IN ACCORDANCE WITH SECTION 25-0501 OF THIS TITLE AND
46 TITLE 23 OF ARTICLE 71 OF THIS CHAPTER, EXCEPT THAT A CITY, TOWN OR
47 VILLAGE IN THE EXERCISE OF ITS POWERS UNDER THIS SECTION, SHALL NOT BE
48 SUBJECT TO THE PROVISIONS OF SUBDIVISION 4 OF SECTION 25-0501, SUBDIVI-
49 SIONS 2 AND 3 OF SECTION 25-0503, OR SECTION 25-0505 OF THIS TITLE, BUT
50 SHALL BE SUBJECT TO JUDICIAL REVIEW SECTION 25-0404 OF THIS ARTICLE.

51 S 25-0509. RELATIONSHIP TO OTHER LAWS.

52 NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO REMOVE FROM ANY LOCAL
53 GOVERNMENT ANY AUTHORITY PERTAINING TO THE REGULATION OF TIDAL WETLANDS,
54 WHETHER SUCH WETLANDS ARE UNDER THE JURISDICTION OF THE DEPARTMENT OR A
55 COUNTY PURSUANT TO SUBDIVISION 4 OF SECTION 25-0501 OF THIS TITLE, UNDER
56 THE COUNTY, GENERAL CITY, GENERAL MUNICIPAL, MUNICIPAL HOME RULE, TOWN,

1 VILLAGE, OR ANY OTHER LAW, PROVIDED, HOWEVER, THAT ANY SUCH REGULATION
2 BY A LOCAL GOVERNMENT SHALL BE AT LEAST AS PROTECTIVE OF TIDAL WETLANDS
3 AS THE REGULATIONS IN EFFECT PURSUANT TO THE PROVISIONS OF THIS CHAPTER
4 OR ANY RULE OR REGULATION PROMULGATED PURSUANT TO THE PROVISIONS OF THIS
5 ARTICLE OR PURSUANT TO A LOCAL TIDAL WETLANDS PROTECTION LAW OR ORDI-
6 NANCE ADOPTED BY A COUNTY PURSUANT TO THE PROVISIONS OF SECTION 25-0501
7 OF THIS TITLE.

8 S 2. This act shall take effect on the one hundred eightieth day after
9 it shall have become a law; provided, however, that effective immediate-
10 ly, the addition, amendment and/or repeal of any rule or regulation
11 necessary for the implementation of this act on its effective date are
12 authorized and directed to be made and completed on or before such
13 effective date.