

4617

2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to freshwater wetlands and repealing section 24-1305 of such law relating thereto

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

- 1 Section 1. Subdivision 7 of section 24-0105 of the environmental
2 conservation law, as added by chapter 614 of the laws of 1975 and as
3 renumbered by chapter 654 of the laws of 1977, is amended to read as
4 follows:
- 5 7. Any loss of freshwater wetlands deprives the people of the state of
6 some or all of the many and multiple benefits to be derived from
7 wetlands, to wit:
- 8 (a) flood and storm control by the hydrologic absorption and storage
9 capacity of freshwater wetlands;
- 10 (b) wildlife habitat by providing breeding, nesting and feeding
11 grounds and cover for many forms of wildlife, wildfowl and shorebirds,
12 including migratory wildfowl and rare, *ENDANGERED OR THREATENED* species
13 such as the bald eagle and osprey;
- 14 (c) protection of subsurface water resources and provision for valu-
15 able watersheds and recharging ground water supplies;
- 16 (d) recreation by providing areas for hunting, fishing, boating,
17 hiking, bird watching, photography, camping and other uses;
- 18 (e) pollution treatment by serving as biological and chemical oxida-
19 tion basins;
- 20 (f) erosion control by serving as sedimentation areas and filtering
21 basins, absorbing silt and organic matter and protecting channels and
22 harbors;

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

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1 (g) education and scientific research by providing readily accessible
2 outdoor bio-physical laboratories, living classrooms and vast training
3 and education resources; [and]

4 (h) open space and aesthetic appreciation by providing often the only
5 remaining open areas along crowded river fronts and coastal Great Lakes
6 regions; [and]

7 (i) sources of nutrients in freshwater food cycles and nursery grounds
8 and sanctuaries for freshwater fish[.];

9 (J) PRESERVATION OF PLANT SPECIES THAT ARE RARE, ENDANGERED, OR
10 EXPLOITABLY VULNERABLE AS DEFINED IN SECTION 9-1503 OF THIS CHAPTER; AND

11 (K) PRESERVATION OF COMMUNITIES OF PLANTS AND ANIMALS THAT ARE DEEMED
12 BY THE COMMISSIONER TO BE RARE IN THE STATE OR IN A REGION OF THE STATE.

13 S 2. The opening paragraph of subdivision 1 and subdivision 2 of
14 section 24-0107 of the environmental conservation law, as amended by
15 chapter 654 of the laws of 1977, are amended to read as follows:

16 "Freshwater wetlands" means lands and waters of the state [as shown on
17 the freshwater wetlands map which] THAT ARE ONE ACRE OR MORE IN SIZE OR,
18 ADJACENT TO A WATER BODY, INCLUDING AN INTERMITTENT WATER BODY OR, IN
19 THE DISCRETION OF THE COMMISSIONER, OF SIGNIFICANT LOCAL IMPORTANCE FOR
20 ONE OR MORE OF THE SPECIFIC BENEFITS SET FORTH IN SUBDIVISION SEVEN OF
21 SECTION 24-0105 OF THIS TITLE. FRESHWATER WETLANDS SHALL contain any or
22 all of the following:

23 2. "Freshwater wetlands map" shall mean a map [promulgated] DEVELOPED
24 by the department pursuant to section 24-0301 of this article on which
25 are indicated the boundaries of any freshwater wetlands. THESE MAPS WILL
26 SERVE THE PURPOSE OF EDUCATING THE PUBLIC ON THE LOCATION OF WETLANDS.

27 S 3. Subdivisions 1, 2, 3, 4, 5 and 6 of section 24-0301 of the envi-
28 ronmental conservation law, subdivisions 1, 2 and 3 as amended by chap-
29 ter 654 of the laws of 1977, and subdivisions 4, 5 and 6 as amended by
30 chapter 16 of the laws of 2010, are amended to read as follows:

31 1. The commissioner shall, as soon as practicable, conduct a study to
32 identify and map those individual freshwater wetlands in the state of
33 New York [which shall have an area of at least twelve and four-tenths
34 acres or more, or if less than twelve and four-tenths acres, (a) have,
35 in the discretion of the commissioner, and subject to review of his
36 action by the board created pursuant to title eleven of this article,
37 unusual local importance for one or more of the specific benefits set
38 forth in subdivision seven of section 24-0105] (A) AS DEFINED IN SECTION
39 24-0107 OF THIS ARTICLE or (b) THAT are located within the Adirondack
40 park and meet the definition of wetlands contained in subdivision
41 sixty-eight of section eight hundred two [of article twenty-seven] of
42 the executive law, and shall determine their characteristics. This study
43 shall, in addition to such other data as the commissioner may determine
44 to be included, consist of the freshwater wetlands inventory of the
45 department [of environmental conservation], currently being made,
46 together with other available data on freshwater wetlands, whether
47 assisted by the state of New York under the tidal wetlands act or other-
48 wise, or assembled by federal or local governmental or private agencies,
49 all of which information shall be assembled and integrated, as applica-
50 ble, into a map of freshwater wetlands of the state of New York. Such
51 study may, in the discretion of the commissioner, be carried out on a
52 sectional or regional basis, as indicated by need, subject to overall
53 completion in an expeditious fashion subject to the terms of this chap-
54 ter. [This map, and any orders issued pursuant to the provisions of this
55 article, shall comprise a part of the statewide environmental plan as
56 provided for in section 3-0303 of this chapter.] As soon as practicable

1 the commissioner shall file with the secretary of state a detailed
2 description of the technical methods and requirements to be utilized in
3 compiling the inventory, and he shall afford the public an opportunity
4 to submit comments thereon.

5 2. Upon completion of a freshwater wetlands inventory, the commission-
6 er shall prepare a [tentative] DRAFT freshwater wetlands map delineating
7 the boundaries of such wetlands as determined by the study and inventory
8 conducted pursuant to subdivision one of this section. The map may be
9 prepared for different sections or regions of the state separately, as
10 the commissioner shall determine. The commissioner shall consult and
11 cooperate with the Adirondack park agency in the preparation of a
12 [tentative] DRAFT freshwater wetlands map for any area within the
13 Adirondack park.

14 3. The [tentative] DRAFT freshwater wetlands map shall set forth the
15 boundaries of such wetlands as accurately as is practicable to inform
16 the owners thereof, the public and the department of the approximate
17 location of the actual boundaries of the wetlands, subject to motion for
18 delineation pursuant to this section, or more precise definition thereof
19 in the discretion of the commissioner. The commissioner shall take into
20 consideration, whenever possible, the boundaries of the local government
21 or governments within which the wetlands are located.

22 4. Upon completion of the [tentative] DRAFT freshwater wetlands map
23 for a particular area, the commissioner or his designated hearing offi-
24 cer shall hold a public hearing in that area in order to afford an
25 opportunity for any person to propose additions or deletions from such
26 map. The commissioner shall give notice of such hearing to [each owner
27 of record as shown on the latest completed tax assessment rolls, of
28 lands designated as such wetlands as shown on said map and also to] the
29 chief administrative officer and clerk of each local government within
30 the boundaries of which any such wetland or a portion thereof is located
31 and, in the case of a [tentative] DRAFT freshwater wetlands map for any
32 area within the Adirondack park, to the Adirondack park agency, by
33 certified mail not less than thirty days prior to the date set for such
34 hearing and shall assure that a copy of the relevant map is available
35 for public inspection at a convenient location in such local government.
36 The map filed with a local government may, at the local government's
37 request, be either a physical copy of the [tentative] DRAFT freshwater
38 wetlands map, or, if available, a digital file that represents it. The
39 commissioner shall also cause notice of such hearing to be published at
40 least once, not more than thirty days nor fewer than ten days before the
41 date set for such hearing, in at least two newspapers having general
42 circulation in the area where such wetlands are located. The commission-
43 er may post on the department's website a digital image that represents
44 the [tentative] DRAFT freshwater wetlands map.

45 5. [After considering the testimony given at such hearing and any
46 other facts which may be deemed pertinent, after considering the rights
47 of affected property owners and the ecological balance in accordance
48 with the policy and purposes of this article, and, in the case of
49 wetlands or portions thereof within the Adirondack park, after consult-
50 ing with the Adirondack park agency, the commissioner shall promulgate
51 by order the final freshwater wetlands map. Such order shall not be
52 promulgated less than sixty days from the date of the hearing required
53 by subdivision four of this section. A copy of the order, together with
54 a copy of such map or relevant portion thereof shall be filed in the
55 office of the clerk of each local government in which each such wetland
56 or a portion thereof is located and, in the case of a map for any area

1 within the Adirondack park, with the Adirondack park agency. The map
2 filed with a local government may, at the local government's request, be
3 either a physical copy of the final freshwater wetlands map, or, if
4 available, a digital file that represents it. The commissioner shall
5 simultaneously give notice of such order to each owner of lands, as
6 shown on the latest completed tax assessment rolls, designated as such
7 wetlands by mailing a copy of such order to such owner by certified mail
8 in any case where a notice by certified mail was not sent pursuant to
9 subdivision four of this section, and in all other cases by first class
10 mail. The commissioner shall also give notice of such order at such time
11 to the chief administrative officer of each local government within the
12 boundaries of which any such wetland or a portion thereof is located. At
13 the time of filing with such clerk or clerks, the commissioner shall
14 also cause a copy of such order to be published in at least two newspa-
15 pers having general circulation in the area where such wetlands are
16 located.] AFTER CONSIDERATION OF COMMENTS FROM THE PUBLIC THE COMMIS-
17 SIONER MAY MAKE ALTERATIONS TO THE DRAFT MAP CONSISTENT WITH SECTION
18 24-0107 OF THIS ARTICLE. THE COMMISSIONER SHALL FINALIZE THE MAP AND
19 FILE A COPY OF THE MAP WITH THE OFFICE OF THE CLERK OF EACH LOCAL
20 GOVERNMENT WITH JURISDICTION OVER PART OR ALL OF THE REGION SHOWN ON THE
21 MAP. The commissioner may post on the department's website a digital
22 image that represents the final freshwater wetlands map.

23 6. Except as provided in subdivision eight of this section, the
24 commissioner shall supervise the maintenance of such boundary maps,
25 which shall be available to the public for inspection and examination at
26 the regional office of the department in which the wetlands are wholly
27 or partly located and in the office of the clerk of each county in which
28 each such wetland or a portion thereof is located. The commissioner may
29 readjust the map thereafter to clarify the boundaries of the wetlands,
30 to correct any errors on the map, to effect any additions, deletions or
31 technical changes on the map, and to reflect changes as have occurred as
32 a result of the granting of permits pursuant to section 24-0703 of this
33 article, or natural changes which may have occurred through erosion,
34 accretion, or otherwise. Notice of such readjustment shall be given in
35 the same manner as set forth in subdivision [five] FOUR of this section
36 for the [promulgation] DEVELOPMENT of final freshwater wetlands maps. In
37 addition, at the time notice is provided pursuant to subdivision [five]
38 FOUR of this section, the commissioner shall update any digital image of
39 the map posted on the department's website to reflect such readjustment.

40 S 4. Subdivisions 1, 2 and 4 of section 24-0701 of the environmental
41 conservation law, subdivisions 1 and 2 as amended by chapter 654 of the
42 laws of 1977 and subdivision 4 as amended by chapter 697 of the laws of
43 1979, are amended and a new subdivision 9 is added to read as follows:

44 1. [After issuance of the official freshwater wetlands map of the
45 state, or of any selected section or region thereof, any] ANY person
46 desiring to conduct on freshwater wetlands [as so designated thereon]
47 any of the regulated activities set forth in subdivision two of this
48 section must obtain a permit as provided in this title.

49 2. Activities subject to regulation UNDER SUBDIVISION ONE OF THIS
50 SECTION shall include SUBDIVISION OF PARCELS OF LAND CONTAINING FRESHWA-
51 TER WETLANDS AND any form of draining, dredging, excavation, removal of
52 soil, mud, sand, shells, gravel or other aggregate from any freshwater
53 wetland, either directly or indirectly; and any form of dumping, fill-
54 ing, or depositing of any soil, stones, sand, gravel, mud, rubbish or
55 fill of any kind, either directly or indirectly; erecting any struc-
56 tures, roads, the driving of pilings, or placing of any other

1 obstructions whether or not changing the ebb and flow of the water; any
2 form of pollution, including but not limited to, installing a septic
3 tank, running a sewer outfall, discharging sewage treatment effluent or
4 other liquid wastes into or so as to drain into a freshwater wetland;
5 and any other activity which substantially impairs any of the several
6 functions served by freshwater wetlands or the benefits derived there-
7 from which are set forth in section 24-0105 of this article. These
8 activities are subject to regulation whether or not they occur upon the
9 wetland itself, if they impinge upon or otherwise substantially affect
10 the wetlands and are located not more than one hundred feet from the
11 boundary of such wetland. Provided, that a greater distance from any
12 such wetland may be regulated pursuant to this article by the appropri-
13 ate local government or by the department, whichever has jurisdiction
14 over such wetland, where necessary to protect and preserve the wetland.

15 4. [The] ON LANDS IN ACTIVE AGRICULTURAL USE, THE activities of farm-
16 ers and other landowners in grazing and watering livestock, making
17 reasonable use of water resources, harvesting natural products of the
18 wetlands, selectively cutting timber, draining land or wetlands for
19 growing agricultural products and otherwise engaging in the use of
20 wetlands or other land for growing agricultural products shall be
21 excluded from regulated activities and shall not require a permit under
22 subdivision one [hereof] OF THIS SECTION, except that structures not
23 required for enhancement or maintenance of the agricultural productivity
24 of the land and any filling activities shall not be excluded hereunder,
25 and provided that the use of land [designated as a freshwater wetland
26 upon the freshwater wetlands map at the effective date thereof] THAT
27 MEETS THE DEFINITION OF A FRESHWATER WETLAND IN SECTION 24-0107 OF THIS
28 ARTICLE for uses other than those referred to in this subdivision shall
29 be subject to the provisions of this article.

30 9. ANY PERMIT OBTAINED SUBJECT TO SUBDIVISION ONE OF THIS SECTION
31 SHALL BE PERMANENTLY APPENDED TO THE DEED FOR THE REAL PROPERTY SUCH
32 REGULATED ACTION OCCURRED ON.

33 S 5. Subdivision 5 of section 24-0703 of the environmental conserva-
34 tion law, as amended by chapter 233 of the laws of 1979, is amended to
35 read as follows:

36 5. [Prior to the promulgation of the final freshwater wetlands map in
37 a particular area and the implementation of a freshwater wetlands
38 protection law or ordinance, no person shall conduct, or cause to be
39 conducted, any activity for which a permit is required under section
40 24-0701 of this article on any freshwater wetland unless he has obtained
41 a permit from the commissioner under this section.] Any person may
42 inquire of the department as to whether or not a given parcel of land
43 [will be designated] INCLUDES a freshwater wetland subject to regu-
44 lation. The department shall give a definite answer in writing within
45 thirty days of such request as to [whether] THE STATUS OF such parcel
46 [will or will not be so designated]. Provided that, in the event that
47 weather or ground conditions prevent the department from making a deter-
48 mination within thirty days, it may extend such period until a determi-
49 nation can be made. Such answer in the affirmative shall be reviewable
50 pursuant to title eleven of this article; such an answer in the negative
51 shall be a complete defense to the enforcement of this article as to
52 such parcel of land. [The commissioner may by regulation adopted after
53 public hearing exempt categories or classes of wetlands or individual
54 wetlands which he determines not to be critical to the furtherance of
55 the policies and purposes of this article.]

1 S 6. Subdivision 1 of section 24-0901 of the environmental conserva-
2 tion law, as added by chapter 614 of the laws of 1975, is amended to
3 read as follows:

4 1. [Upon completion of the freshwater wetlands map, the] THE commis-
5 sioner shall confer with local government officials in each region in
6 which the inventory has been conducted to establish a program for the
7 protection of the freshwater wetlands of the state.

8 S 7. Subdivision 1 of section 24-0903 of the environmental conserva-
9 tion law, as added by chapter 614 of the laws of 1975, is amended to
10 read as follows:

11 1. [Upon completion of the freshwater wetlands map of the state, or of
12 any selected section or region thereof, the commissioner shall proceed
13 to classify freshwater wetlands so designated thereon according to their
14 most appropriate uses, in] IN light of the values set forth in section
15 24-0105 of this article and the present conditions of [such] FRESHWATER
16 wetlands[. The], THE commissioner shall determine what uses of [such]
17 FRESHWATER wetlands are most compatible with the foregoing and shall
18 prepare minimum land use regulations to permit only such compatible
19 uses. [The classifications may cover freshwater wetlands in more than
20 one governmental subdivision. Permits pursuant to section 24-0701 of
21 this article are required whether or not a classification has been
22 promulgated.]

23 S 8. Section 24-1305 of the environmental conservation law is
24 REPEALED.

25 S 9. This act shall take effect on the ninetieth day after it shall
26 have become a law.