

3998

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. SCHNEIDERMAN -- 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 and the state finance law, in relation to the preservation of freshwater wetland areas; and to repeal section 24-1305 of the environmental conservation 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. Section 24-0107 of the environmental conservation law, as amended
14 by chapter 654 of the laws of 1977, is amended to read as follows:

15 S 24-0107. Definitions.

16 1. "Freshwater wetlands" means lands and waters of the state [as shown
17 on the freshwater wetlands map] which contain any or all of the follow-
18 ing:

19 (a) lands and submerged lands commonly called marshes, swamps,
20 sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation
21 of the following types:

22 (1) wetland trees, which depend upon seasonal or permanent flooding or
23 sufficiently water-logged soils to give them a competitive advantage
24 over other trees; including, among others, red maple (*Acer rubrum*),
25 willows (*Salix* spp.), black spruce (*Picea mariana*); swamp white oak
26 (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus*
27 *nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*),
28 and Larch (*Larix laricina*);

29 (2) wetland shrubs, which depend upon seasonal or permanent flooding
30 or sufficiently water-logged soils to give them a competitive advantage
31 over other shrubs; including, among others, alder (*Alnus* spp.), button-
32 bush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*),
33 dogwoods (*Cornus* spp.), and leatherleaf (*Chamaedaphne calyculata*);

34 (3) emergent vegetation, including, among others, cattails (*Typha*
35 spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.),
36 arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed
37 (*Phragmites communis*), wildrice (*Zizania aquatica*), bur-reeds (*Spargani-*
38 *um* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife
39 (*Decodon verticillatus*); and water plantain (*Alisma plantago-aquatica*);

40 (4) rooted, floating-leaved vegetation; including, among others,
41 water-lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and
42 spatterdock (*Nuphar* spp.);

43 (5) free-floating vegetation; including, among others, duckweed (*Lemna*
44 spp.), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia* spp.);

45 (6) wet meadow vegetation, which depends upon seasonal or permanent
46 flooding or sufficiently water-logged soils to give it a competitive
47 advantage over other open land vegetation; including, among others,
48 sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice
49 cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*),
50 swamp loosestrife (*Decodon verticillatus*), and spikerush (*Eleocharis*
51 spp.);

52 (7) bog mat vegetation; including, among others, sphagnum mosses
53 (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf
54 (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and
55 cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

1 (8) submergent vegetation; including, among others, pondweeds (Pota-
2 mogeton spp.), naiads (Najas spp.), bladderworts (Utricularia spp.),
3 wild celery (Vallisneria americana), coontail (Ceratophyllum demersum),
4 water milfoils (Myriophyllum spp.), muskgrass (Chara spp.), stonewort
5 (Nitella spp.), water weeds (Elodea spp.), and water smartweed (Polygo-
6 num amphibium);

7 (b) lands and submerged lands containing remnants of any vegetation
8 that is not aquatic or semi-aquatic that has died because of wet condi-
9 tions over a sufficiently long period, provided that such wet conditions
10 do not exceed a maximum seasonal water depth of six feet and provided
11 further that such conditions can be expected to persist indefinitely,
12 barring human intervention;

13 (c) lands and waters substantially enclosed by aquatic or semi-aquatic
14 vegetation as set forth in paragraph (a) OF THIS SUBDIVISION or by dead
15 vegetation as set forth in paragraph (b) OF THIS SUBDIVISION, the regu-
16 lation of which is necessary to protect and preserve the aquatic and
17 semi-aquatic vegetation; and

18 (d) the waters overlying the areas set forth in PARAGRAPHS (a) and (b)
19 OF THIS SUBDIVISION and the lands underlying PARAGRAPH (c) OF THIS
20 SUBDIVISION.

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

26 3. "Boundaries of a freshwater wetland" shall mean the outer limit of
27 the vegetation specified in paragraphs (a) and (b) of subdivision one of
28 THIS section [24-0107] and of the lands and waters specified in para-
29 graph (c) of such subdivision.

30 4. "Local government" shall mean a village, town, city, or county.

31 5. "State agency" shall mean any state department, bureau, commis-
32 sion, board or other agency, public authority or public benefit corpo-
33 ration.

34 6. "Person" means any corporation, firm, partnership, association,
35 trust, estate, one or more individuals, and any unit of government or
36 agency or subdivision thereof, including the state.

37 7. "Board" shall mean the freshwater wetland appeals board.

38 8. "Pollution" shall mean the presence in the environment of man-in-
39 duced conditions or contaminants in quantities or characteristics which
40 are or may be injurious to human, plant or wildlife, or other animal
41 life or to property.

42 S 3. Section 24-0301 of the environmental conservation law, as amended
43 by chapter 654 of the laws of 1977, is amended to read as follows:

44 S 24-0301. Commissioner's study.

45 1. The commissioner shall, as soon as practicable, conduct a study to
46 identify and map those individual freshwater wetlands in the state of
47 New York [which shall have an area of at least twelve and four-tenths
48 acres or more, or if less than twelve and four-tenths acres, (a) have,
49 in the discretion of the commissioner, and subject to review of his
50 action by the board created pursuant to title eleven of this article,
51 unusual local importance for one or more of the specific benefits set
52 forth in subdivision seven of section 24-0105] (A) AS DEFINED IN SECTION
53 24-0107 OF THIS ARTICLE or (b) THAT are located within the Adirondack
54 park and meet the definition of wetlands contained in subdivision
55 sixty-eight of section eight hundred two [of article twenty-seven] of
56 the executive law, and shall determine their characteristics. This study

1 shall, in addition to such other data as the commissioner may determine
2 to be included, consist of the freshwater wetlands inventory of the
3 department of environmental conservation, currently being made, together
4 with other available data on freshwater wetlands, whether assisted by
5 the state of New York under the tidal wetlands act or otherwise, or
6 assembled by federal or local governmental or private agencies, all of
7 which information shall be assembled and integrated, as applicable, into
8 a map of freshwater wetlands of the state of New York. Such study may,
9 in the discretion of the commissioner, be carried out on a sectional or
10 regional basis, as indicated by need, subject to overall completion in
11 an expeditious fashion subject to the terms of this chapter. This map,
12 and any orders issued pursuant to the provisions of this article, shall
13 comprise a part of the statewide environmental plan as provided for in
14 section 3-0303 of this chapter. As soon as practicable the commissioner
15 shall file with the secretary of state a detailed description of the
16 technical methods and requirements to be utilized in compiling the
17 inventory, and he OR SHE shall afford the public an opportunity to
18 submit comments thereon.

19 2. Upon completion of a freshwater wetlands inventory, the commission-
20 er shall prepare a [tentative] DRAFT freshwater wetlands map delineating
21 the boundaries of such wetlands as determined by the study and inventory
22 conducted pursuant to subdivision one of this section. The map may be
23 prepared for different sections or regions of the state separately, as
24 the commissioner shall determine. The commissioner shall consult and
25 cooperate with the Adirondack park agency in the preparation of a
26 [tentative] DRAFT freshwater wetlands map for any area within the
27 Adirondack park.

28 3. The [tentative] DRAFT freshwater wetlands map shall set forth the
29 boundaries of such wetlands as accurately as is practicable to inform
30 the owners thereof, the public and the department of the approximate
31 location of the actual boundaries of the wetlands, subject to motion for
32 delineation pursuant to this section, or more precise definition thereof
33 in the discretion of the commissioner. The commissioner shall take into
34 consideration, whenever possible, the boundaries of the local government
35 or governments within which the wetlands are located.

36 4. Upon completion of the [tentative] DRAFT freshwater wetlands map
37 for a particular area, the commissioner or his designated hearing offi-
38 cer shall hold a public hearing in that area in order to afford an
39 opportunity for any person to propose additions or deletions from such
40 map. The commissioner shall give notice of such hearing to each owner of
41 record as shown on the latest completed tax assessment rolls, of lands
42 designated as such wetlands as shown on said map and also to the chief
43 administrative officer and clerk of each local government within the
44 boundaries of which any such wetland or a portion thereof is located
45 and, in the case of a [tentative] DRAFT freshwater wetlands map for any
46 area within the Adirondack park, to the Adirondack park agency, by
47 certified mail not less than thirty days prior to the date set for such
48 hearing and shall assure that a copy of the relevant map is available
49 for public inspection at a convenient location in such local government.
50 The commissioner shall also cause notice of such hearing to be published
51 at least once, not more than thirty days nor fewer than ten days before
52 the date set for such hearing, in at least two newspapers having general
53 circulation in the area where such wetlands are located.

54 5. After considering the testimony given at such hearing and any other
55 facts which may be deemed pertinent, after considering the rights of
56 affected property owners and the ecological balance in accordance with

1 the policy and purposes of this article, and, in the case of wetlands or
2 portions thereof within the Adirondack park, after consulting with the
3 Adirondack park agency, the commissioner shall promulgate by order the
4 final freshwater wetlands map. Such order shall not be promulgated less
5 than sixty days from the date of the hearing required by subdivision
6 four hereof. AFTER CONSIDERATION OF COMMENTS FROM THE PUBLIC THE COMMIS-
7 SIONER MAY MAKE ALTERATIONS TO THE DRAFT MAP CONSISTENT WITH SECTION
8 24-0107 OF THIS ARTICLE. THE COMMISSIONER SHALL FINALIZE THE MAP AND
9 FILE A COPY OF THE MAP WITH THE OFFICE OF THE CLERK OF EACH GOVERNMENT
10 WITH JURISDICTION OVER PART OR ALL OF THE REGION SHOWN ON THE MAP. A
11 copy of the order, together with a copy of such map or relevant portion
12 thereof shall be filed in the office of the clerk of each local govern-
13 ment in which each such wetland or a portion thereof is located and, in
14 the case of a map for any area within the Adirondack park, with the
15 Adirondack park agency. The commissioner shall simultaneously give
16 notice of such order to each owner of lands, as shown on the latest
17 completed tax assessment rolls, designated as such wetlands by mailing a
18 copy of such order to such owner by certified mail in any case where a
19 notice by certified mail was not sent pursuant to subdivision four here-
20 of, and in all other cases by first class mail. The commissioner shall
21 also give notice of such order at such time to the chief administrative
22 officer of each local government within the boundaries of which any such
23 wetland or a portion thereof is located. At the time of filing with such
24 clerk or clerks, the commissioner shall also cause a copy of such order
25 to be published in at least two newspapers having general circulation in
26 the area where such wetlands are located.

27 6. Except as provided in subdivision eight of this section, [the
28 commissioner shall supervise the maintenance of such boundary maps,
29 which shall be] FRESHWATER WETLAND MAPS SHALL BE POSTED ON THE DEPART-
30 MENT'S WEBSITE AS ELECTRONIC IMAGES SO AS TO MAKE THEM BROADLY available
31 to the public for inspection and examination. IN ADDITION, ELECTRONIC
32 IMAGES SHALL BE AVAILABLE FOR INSPECTION at the regional office of the
33 department in which the wetlands are wholly or partly located and in the
34 office of the clerk of each county in which each such wetland or a
35 portion thereof is located. The [commissioner] DEPARTMENT may readjust
36 the map AS NEEDED thereafter to clarify the boundaries of the wetlands,
37 to correct any errors on the map, to effect any additions, deletions or
38 technical changes on the map, and to reflect changes as have occurred as
39 a result of the granting of permits pursuant to section 24-0703 of this
40 article, or natural changes which may have occurred through erosion,
41 accretion, or otherwise, EXCEPT WETLANDS SHALL NOT BE REMOVED FROM THE
42 MAP IF THEY ARE REDUCED IN SIZE AS A RESULT OF PERMITTED OR UNPERMITTED
43 ACTIVITIES AND SHALL CONTINUE TO BE SUBJECT TO JURISDICTION UNDER THIS
44 ARTICLE. THE DEPARTMENT SHALL THEN CORRECT THE MAP IMAGE AND UPDATE ANY
45 ELECTRONIC IMAGE OF THE MAP PREVIOUSLY POSTED ON ITS WEBSITE TO REFLECT
46 SUCH READJUSTMENT. AT THAT TIME, THE DEPARTMENT SHALL GIVE NOTICE OF
47 SUCH MAP ADJUSTMENT TO AFFECTED LANDOWNERS AND TO THE CHIEF ADMINISTRA-
48 TIVE OFFICER OF EACH COUNTY WITHIN THE BOUNDARIES OF WHICH ANY SUCH
49 WETLAND OR A PORTION THEREOF IS LOCATED. THE DEPARTMENT SHALL ALSO
50 CAUSE NOTICE OF THE ADJUSTED MAP TO BE PUBLISHED IN AT LEAST TWO NEWSPA-
51 PERS HAVING GENERAL CIRCULATION IN THE AREA WHERE SUCH WETLANDS ARE
52 LOCATED. PROVIDED, HOWEVER, THAT WHEN THE DEPARTMENT IS NOTIFIED THAT A
53 PROPOSED ACTIVITY SUBJECT TO REGULATION MAY AFFECT ANY FRESHWATER
54 WETLANDS AS DEFINED IN THIS ARTICLE, WHETHER MAPPED OR NOT, THE DEPART-
55 MENT SHALL DETERMINE WHETHER WETLANDS ARE PRESENT AND WHETHER AN ADJUST-
56 MENT ON THE MAP, AS CURRENTLY FILED, IS NEEDED IMMEDIATELY SO AS TO

1 PROTECT THE VALUES OR MEET THE POLICIES SET FORTH IN SECTION 24-0105 OF
2 THIS ARTICLE, AND IF SO, THE DEPARTMENT SHALL PROVIDE NOTICE TO THE
3 LANDOWNER THAT SUCH LAND IS THEREBY SUBJECT TO ITS JURISDICTION AND THE
4 LANDOWNER SHALL OBTAIN A PERMIT PURSUANT TO SECTIONS 24-0701 AND 24-0703
5 OF THIS ARTICLE PRIOR TO CONDUCTING A REGULATED ACTIVITY UPON ANY FRESH-
6 WATER WETLAND, TO BE FOLLOWED EXPEDITIOUSLY THEREAFTER WITH A MAP
7 ADJUSTMENT AS PROVIDED IN THIS SUBDIVISION. Notice of such readjustment
8 shall be given in the same manner as set forth in subdivision five of
9 this section for the promulgation of final freshwater wetlands maps.

10 7. Except as provided in subdivision eight of this section, the
11 [commissioner] DEPARTMENT may, upon [his] ITS own initiative, and shall,
12 upon a written request by a landowner whose land or a portion thereof
13 may be included within a wetland, or upon the written request of another
14 person or persons or an official body whose interests are shown to be
15 affected, cause to be delineated more precisely the boundary line or
16 lines of a freshwater wetland or a portion thereof. Such more precise
17 delineation of a freshwater wetland boundary line or lines shall be of
18 appropriate scale and sufficient clarity to permit the ready identifica-
19 tion of individual buildings and of other major man-made structures or
20 facilities or significant geographical features with respect to the
21 boundary of any freshwater wetland. The [commissioner] DEPARTMENT shall
22 undertake to delineate the boundary of a particular wetland or wetlands,
23 or a particular part of the boundary thereof only upon a showing by the
24 applicant therefor of good cause for such more precise delineation and
25 the establishment of such more precise line.

26 8. The supervision of the maintenance of any freshwater wetlands map
27 or portion thereof applicable to wetlands within the Adirondack park,
28 the readjustment and precise delineation of wetland boundary lines and
29 the other functions and duties ascribed to the [commissioner] DEPARTMENT
30 by [subdivisions six and seven of] this section shall be performed
31 INSIDE THE ADIRONDACK PARK by the Adirondack park agency, which shall
32 make such maps available for public inspection and examination at its
33 headquarters.

34 S 4. Section 24-0701 of the environmental conservation law, as amended
35 by chapter 654 of the laws of 1977 and subdivision 4 as amended by chap-
36 ter 697 of the laws of 1979, is amended to read as follows:
37 S 24-0701. Permits.

38 1. After issuance of the official freshwater wetlands map of the
39 state, or of any selected section or region thereof, any person desiring
40 to conduct on freshwater wetlands as so designated thereon any of the
41 regulated activities set forth in subdivision two of this section must
42 obtain a permit as provided in this title.

43 2. Activities subject to regulation UNDER SUBDIVISION ONE OF THIS
44 SECTION shall include SUBDIVISIONS OF PARCELS OF LAND CONTAINING FRESH-
45 WATER WETLANDS AND any form of draining, dredging, excavation, removal
46 of soil, mud, sand, shells, gravel or other aggregate from any freshwa-
47 ter wetland, either directly or indirectly; and any form of dumping,
48 filling, or depositing of any soil, stones, sand, gravel, mud, rubbish
49 or fill of any kind, either directly or indirectly; erecting any struc-
50 tures, roads, the driving of pilings, or placing of any other
51 obstructions whether or not changing the ebb and flow of the water; any
52 form of pollution, including but not limited to, installing a septic
53 tank, running a sewer outfall, discharging sewage treatment effluent or
54 other liquid wastes into or so as to drain into a freshwater wetland;
55 and any other activity which substantially impairs any of the several
56 functions served by freshwater wetlands or the benefits derived there-

1 from which are set forth in section 24-0105 of this article. These
2 activities are subject to regulation whether or not they occur upon the
3 wetland itself, if they impinge upon or otherwise substantially affect
4 the wetlands and are located not more than one hundred feet from the
5 boundary of such wetland. Provided, that a greater distance from any
6 such wetland may be regulated pursuant to this article by the appropri-
7 ate local government or by the department, whichever has jurisdiction
8 over such wetland, where necessary to protect and preserve the wetland.

9 3. The depositing or removal of the natural products of the freshwater
10 wetlands by recreational or commercial fishing, shell-fishing, aquacul-
11 ture, hunting or trapping shall be excluded from regulated activities,
12 where otherwise legally permitted and regulated.

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

28 5. Public health activities, orders, and regulations of the department
29 of health shall be excluded from regulated activities. Copies of all
30 such public health orders and regulations affecting wetlands shall be
31 filed with the department of environmental conservation. The commission-
32 er may request modification of such orders or regulations if he OR SHE
33 deems such necessary to implement the [policy] POLICIES of this article.

34 6. The commissioner shall review all current mosquito control projects
35 to determine whether they are having any adverse impact on freshwater
36 wetlands. Where any adverse impact is found, the commissioner may
37 require modification of such projects if he OR SHE deems such necessary
38 for the implementation of the policies of this article.

39 7. Where dredging or filling is in navigable waters of the state or is
40 for the reconstruction or repair of certain dams and docks, and where
41 such activity also affects freshwater wetlands, any person undertaking
42 such activity must seek permission under this article as well as under
43 any other applicable law.

44 8. On any land that is being developed pursuant to a planned unit
45 development ordinance or local law where freshwater wetlands are to
46 remain as open space, development activities shall be permitted in areas
47 contiguous to such wetlands if the local government affirms that such
48 activities will not despoil said wetland.

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

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

55 5. Prior to the promulgation of the final freshwater wetlands map in a
56 particular area and the implementation of a freshwater wetlands

1 protection law or ordinance, no person shall conduct, or cause to be
2 conducted, any activity for which a permit is required under section
3 24-0701 of this article on any freshwater wetland unless he has obtained
4 a permit from the commissioner under this section. Any person may
5 inquire of the department as to whether or not a given parcel of land
6 [will be designated] INCLUDES a freshwater wetland subject to regu-
7 lation. The department shall give a definite answer in writing within
8 thirty days of such request as to [whether] THE STATUS OF such parcel
9 [will or will not be so designated]. Provided that, in the event that
10 weather or ground conditions prevent the department from making a deter-
11 mination within thirty days, it may extend such period until a determi-
12 nation can be made. Such answer in the affirmative shall be reviewable
13 pursuant to title eleven of this article; such an answer in the negative
14 shall be a complete defense to the enforcement of this article as to
15 such parcel of land. The commissioner may by regulation adopted after
16 public hearing exempt categories or classes of wetlands or individual
17 wetlands which he determines not to be critical to the furtherance of
18 the policies and purposes of this article.

19 S 6. Subdivisions 1, 2 and 4 of section 24-0901 of the environmental
20 conservation law, subdivisions 1 and 2 as added by chapter 614 of the
21 laws of 1975 and subdivision 4 as amended by chapter 654 of the laws of
22 1977, are amended to read as follows:

23 1. Upon completion of the freshwater wetlands map, the [commissioner]
24 DEPARTMENT shall confer with local government officials in each region
25 in which the [inventory has been conducted] WETLANDS OCCUR to establish
26 a program for the protection of the freshwater wetlands of the state.

27 2. The [commissioner] DEPARTMENT may enter into cooperative agreements
28 with any city, village, town or county, or with ANY NOT-FOR-PROFIT
29 CONSERVATION ORGANIZATION OR an owner of freshwater wetlands or with any
30 one or more of them, for the purpose of preserving [and maintaining],
31 MANAGING, RESTORING AND MAINTAINING, OR OTHERWISE ENGAGING IN CONSERVA-
32 TION PRACTICES, in accordance with the policies of this article, those
33 freshwater wetlands which are within the boundaries of such city,
34 village, town [or], county, OR PRIVATE PROPERTY.

35 4. A cooperative agreement with any such village, town, city or county
36 may provide for the development by personnel and facilities of the
37 department or the payment out of funds appropriated therefor, for the
38 purpose of preserving, maintaining, MANAGING, RESTORING, or enhancing
39 such wetlands in accordance with the policies of this article, AND FOR
40 BENEFITS ACCRUED TO THE PEOPLE OF THE STATE, and for the furnishing of
41 such personnel, facilities or funds as may be agreed upon by the parties
42 to the cooperative agreement.

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

46 1. Upon completion of the freshwater wetlands map of the state, or of
47 any selected section or region thereof, the commissioner shall proceed
48 to classify freshwater wetlands so designated thereon according to their
49 most appropriate uses[, in]. IN light of the values set forth in section
50 24-0105 of this article and the present conditions of [such] FRESHWATER
51 wetlands[. The], THE commissioner shall determine what uses of [such]
52 FRESHWATER wetlands are most compatible with the foregoing and shall
53 prepare minimum land use regulations to permit only such compatible
54 uses. The classifications may cover freshwater wetlands in more than
55 one governmental subdivision. Permits pursuant to section 24-0701 of

1 this article are required whether or not a classification has been
2 promulgated.

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

5 S 9. Section 70-0117 of the environmental conservation law is amended
6 by adding two new subdivisions 8 and 9 to read as follows:

7 8. (A) ALL PERSONS REQUIRED TO OBTAIN A PERMIT FROM THE DEPARTMENT
8 PURSUANT TO SECTION 24-0701 OF THIS CHAPTER SHALL SUBMIT TO THE DEPART-
9 MENT AN APPLICATION FEE IN AN AMOUNT NOT TO EXCEED THE FOLLOWING:

10 (I) TWO HUNDRED DOLLARS PER APPLICATION FEE FOR A PERMIT FOR A MINOR
11 PROJECT OR MODIFICATION TO AN EXISTING STRUCTURE AND FIVE CENTS PER
12 SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER AREAS;

13 (II) TWO HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
14 PROJECT ASSOCIATED WITH A SINGLE FAMILY DWELLING AND CUSTOMARY APPURTE-
15 NANCES THERETO AND FIVE CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND
16 BUFFER AREAS;

17 (III) NINE HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
18 PROJECT PLUS TEN CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER
19 AREAS.

20 (B) ALL PERSONS REQUIRED TO OBTAIN A PERMIT FROM THE DEPARTMENT PURSU-
21 ANT TO SECTION 25-0402 OF THIS CHAPTER SHALL SUBMIT TO THE DEPARTMENT AN
22 APPLICATION FEE IN AN AMOUNT NOT TO EXCEED THE FOLLOWING:

23 (I) TWO HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MINOR
24 PROJECT OR MODIFICATION TO AN EXISTING STRUCTURE AND FIVE CENTS PER
25 SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER AREAS;

26 (II) TWO HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
27 PROJECT ASSOCIATED WITH A SINGLE FAMILY DWELLING AND CUSTOMARY APPURTE-
28 NANCES THERETO AND FIVE CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND
29 BUFFER AREAS;

30 (III) NINE HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
31 PROJECT PLUS TEN CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER
32 AREAS.

33 (C) ALL FEES COLLECTED PURSUANT TO THIS SUBDIVISION SHALL BE DEPOSITED
34 INTO THE CONSERVATION FUND PURSUANT TO SECTION EIGHTY-THREE OF THE STATE
35 FINANCE LAW.

36 9. ANY NOT-FOR-PROFIT CORPORATION THAT HAS ENTERED INTO A COOPERATIVE
37 AGREEMENT WITH THE DEPARTMENT FOR THE PURPOSE OF PRESERVING, MAINTAIN-
38 ING, MANAGING, RESTORING, OR ENHANCING SUCH WETLANDS IN ACCORDANCE WITH
39 THE POLICIES OF THIS ARTICLE AND FOR BENEFITS ACCRUED TO THE PEOPLE OF
40 THE STATE, SHALL NOT BE CHARGED A FEE FOR PERMITS THAT MAY BE REQUIRED
41 FOR ACTIVITIES ASSOCIATED WITH RESTORATION OF FRESHWATER OR TIDAL
42 WETLANDS.

43 S 10. Section 71-2303 of the environmental conservation law, as
44 amended by chapter 654 of the laws of 1977, is amended to read as
45 follows:

46 S 71-2303. Violation; penalties.

47 1. Administrative sanctions. Any person who violates, disobeys or
48 disregards any provision of article twenty-four, including title five OF
49 SAID ARTICLE, and section 24-0507 thereof or any rule or regulation,
50 local law or ordinance, OR permit or order issued pursuant thereto,
51 shall be liable to the people of the state for a civil penalty of not to
52 exceed [three] TEN thousand dollars for every such violation, to be
53 assessed, after a hearing or opportunity to be heard upon due notice and
54 with the rights to specification of the charges and representation by
55 counsel at such hearing, by the [commissioner] DEPARTMENT or local
56 government. Such penalty may be recovered in an action brought by the

1 attorney general at the request and in the name of the [commissioner]
2 DEPARTMENT or local government in any court of competent jurisdiction.
3 Such civil penalty may be released or compromised by the [commissioner]
4 DEPARTMENT or local government before the matter has been referred to
5 the attorney general; and where such matter has been referred to the
6 attorney general, any such penalty may be released or compromised and
7 any action commenced to recover the same may be settled and discontinued
8 by the attorney general with the consent of the [commissioner] DEPART-
9 MENT or local government. In addition, the [commissioner] DEPARTMENT or
10 local government shall have power, following a hearing held in conform-
11 ance with the procedures set forth in section 71-1709 of this [chapter]
12 ARTICLE, to direct the violator to cease his violation of the act and to
13 restore the affected freshwater wetland AND ITS REGULATED ADJACENT AREA
14 to its condition prior to the violation, insofar as that is possible
15 within a reasonable time and under the supervision of the [commissioner]
16 DEPARTMENT or local government. Any such order of the [commissioner]
17 DEPARTMENT or local government shall be enforceable in an action brought
18 by the attorney general at the request and in the name of the [commis-
19 sioner] DEPARTMENT or local government in any court of competent juris-
20 diction. Any civil penalty or order issued by the [commissioner] DEPART-
21 MENT or local government pursuant to this subdivision shall be
22 reviewable in a proceeding pursuant to article seventy-eight of the
23 civil practice law and rules.

24 2. Criminal sanctions. Any person who violates any provision of arti-
25 cle twenty-four of this chapter, including any rule or regulation, local
26 law or ordinance, OR permit or order issued pursuant thereto, shall, in
27 addition, for the first offense, be guilty of a violation punishable by
28 a fine of not less than five hundred nor more than [one] FIVE thousand
29 dollars; for a second and each subsequent offense he OR SHE shall be
30 guilty of a misdemeanor punishable by a fine of not less than one thou-
31 sand nor more than [two] TEN thousand dollars or a term of imprisonment
32 of not less than fifteen days nor more than six months or both. [Instead
33 of] IN ADDITION TO these punishments, any offender may be [punishable]
34 PUNISHED by being ordered by the court to restore the affected freshwa-
35 ter wetland AND ITS REGULATED ADJACENT AREA to its condition prior to
36 the offense, insofar as that is possible. The court shall specify a
37 reasonable time for the completion of such restoration, which shall be
38 effected under the supervision of the [commissioner] DEPARTMENT or local
39 government. Each offense shall be a separate and distinct offense and,
40 in the case of a continuing offense, each day's continuance thereof
41 shall be deemed a separate and distinct offense.

42 S 11. Paragraph 1 of subdivision (a) and subdivision (g) of section 83
43 of the state finance law, paragraph 1 of subdivision (a) as amended by
44 chapter 512 of the laws of 1994 and subdivision (g) as added by chapter
45 666 of the laws of 1989, are amended to read as follows:

46 1. The conservation fund shall consist of all moneys belonging to the
47 state received by the department of environmental conservation from the
48 sale of licenses for hunting, for trapping, and for fishing, all moneys
49 received in actions for penalties under articles eleven and thirteen of
50 the environmental conservation law and subdivision two of section
51 71-1929 of the environmental conservation law, or upon the settlement or
52 compromise thereof, all fines for violation of any of the provisions of
53 articles eleven and thirteen of the environmental conservation law, all
54 moneys arising out of the operation of real property under the jurisdic-
55 tion of the division of fish and wildlife in the department of environ-
56 mental conservation heretofore or hereafter acquired by the state of New

1 York, and from any concessions thereon and from any leases thereof,
2 including moneys received from the sale thereof when authorized by law,
3 all moneys received from leases or rentals of shellfish grounds in the
4 marine and coastal district, all moneys from gifts for fish and wildlife
5 management pursuant to section six hundred twenty-five of the tax law,
6 moneys received by the department of environmental conservation from the
7 sale of limited edition prints of fish and wildlife paintings, as
8 authorized by paragraph t of subdivision two of section 3-0301 of the
9 environmental conservation law, all moneys received from the reimburse-
10 ment provided for in paragraph b of subdivision seven of section 8-0109
11 of the environmental conservation law, ALL MONEYS RECEIVED BY THE
12 DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM PERMIT FEES PURSUANT TO
13 SUBDIVISION EIGHT OF SECTION 70-0117 OF THE ENVIRONMENTAL CONSERVATION
14 LAW, ALL MONEYS RECEIVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
15 FROM FINES AND PENALTIES PURSUANT TO SUBDIVISIONS ONE AND TWO OF SECTION
16 71-2303 OF THE ENVIRONMENTAL CONSERVATION LAW, and all other moneys
17 arising out of the application of any provisions of articles eleven and
18 thirteen of the environmental conservation law. These moneys, after
19 appropriation by the legislature, and within the amounts set forth and
20 for the several purposes specified, shall be available to the department
21 of environmental conservation for the care, management, protection and
22 enlargement of the fish, game and shell fish resources of the state and
23 for the promotion of public fishing and shooting. In the accomplishment
24 of these objects the moneys made available hereunder shall be devoted to
25 the purchase or acquisition of lands, lands under water, waters, or
26 rights therein as required, to payment for personal service, for mainte-
27 nance and operation, and for new construction and permanent betterments,
28 and to all other proper expenses of the department of environmental
29 conservation in the administration and enforcement of the provisions of
30 articles eleven and thirteen of the environmental conservation law.

31 (g) All moneys, fees, fines and penalties arising out of the adminis-
32 tration and enforcement of the tidal wetlands act (article twenty-five
33 of the environmental conservation law), EXCEPT PERMIT FEES RECEIVED BY
34 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO SUBDIVISION
35 EIGHT OF SECTION 70-0117 OF THE ENVIRONMENTAL CONSERVATION LAW, shall be
36 deposited into the marine resources account of the conservation fund.

37 S 12. This act shall take effect immediately.