S T A T E O F N E W Y O R K

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:

Section 1. Subdivision 7 of section 24-0105 of the environmental conservation law, as added by chapter 614 of the laws of 1975 and as renumbered by chapter 654 of the laws of 1977, is amended to read as follows:

7. Any loss of freshwater wetlands deprives the people of the state of some or all of the many and multiple benefits to be derived from wetlands, to wit:

(a) flood and storm control by the hydrologic absorption and storage capacity of freshwater wetlands;

(b) wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare, ENDANGERED OR THREATENED species such as the bald eagle and osprey;

(c) protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies;

(d) recreation by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses;

(e) pollution treatment by serving as biological and chemical oxidation basins;

(f) erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and harbors;

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

LBD10990-02-9

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

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

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

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

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

S 2. Section 24-0107 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, is amended to read as follows:

S 24-0107. Definitions.

1. "Freshwater wetlands" means lands and waters of the state [as shown on the freshwater wetlands map] which contain any or all of the following:

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

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

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

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

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

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

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

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

(8) submergent vegetation; including, among others, pondweeds (Potamogeton spp.), naiads (Najas spp.), bladderworts (Utricularia spp.), wild celery (Vallisneria americana), coontail (Ceratophyllum demersum), water milfoils (Myriophyllum spp.), muskgrass (Chara spp.), stonewort (Nitella spp.), water weeds (Elodea spp.), and water smartweed (Polygonum amphibium);

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

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

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

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

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

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

5. "State agency" shall mean any state department, bureau, commission, board or other agency, public authority or public benefit corporation.

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

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

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

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

S 24-0301. Commissioner's study.

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

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

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

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

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

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

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

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

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

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

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

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

S 24-0701. Permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 71-2303. Violation; penalties.

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

attorney general at the request and in the name of the [commissioner] DEPARTMENT or local government in any court of competent jurisdiction. Such civil penalty may be released or compromised by the [commissioner] DEPARTMENT or local government before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the [commissioner] DEPARTMENT or local government. In addition, the [commissioner] DEPARTMENT or local government shall have power, following a hearing held in conformance with the procedures set forth in section 71-1709 of this [chapter] ARTICLE, to direct the violator to cease his violation of the act and to restore the affected freshwater wetland AND ITS REGULATED ADJACENT AREA to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the [commissioner] DEPARTMENT or local government. Any such order of the [commissioner] DEPARTMENT or local government shall be enforceable in an action brought by the attorney general at the request and in the name of the [commissioner] DEPARTMENT or local government in any court of competent jurisdiction. Any civil penalty or order issued by the [commissioner] DEPARTMENT or local government pursuant to this subdivision shall be reviewable in a proceeding pursuant to article seventy-eight of the civil practice law and rules.

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

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

1. The conservation fund shall consist of all moneys belonging to the state received by the department of environmental conservation from the sale of licenses for hunting, for trapping, and for fishing, all moneys received in actions for penalties under articles eleven and thirteen of the environmental conservation law and subdivision two of section 71-1929 of the environmental conservation law, or upon the settlement or compromise thereof, all fines for violation of any of the provisions of articles eleven and thirteen of the environmental conservation law, all moneys arising out of the operation of real property under the jurisdiction of the division of fish and wildlife in the department of environmental conservation heretofore or hereafter acquired by the state of New

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

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

S 12. This act shall take effect immediately.