

4956

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

---

Introduced by Sen. THOMPSON -- 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.

LBD11605-01-9

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

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

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

S 3. Subdivisions 1, 2, 3, 4, 5 and 6 of section 24-0301 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, are amended to read as follows:

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

1 description of the technical methods and requirements to be utilized in  
2 compiling the inventory, and he shall afford the public an opportunity  
3 to submit comments thereon.

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

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

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

39 5. [After considering the testimony given at such hearing and any  
40 other facts which may be deemed pertinent, after considering the rights  
41 of affected property owners and the ecological balance in accordance  
42 with the policy and purposes of this article, and, in the case of  
43 wetlands or portions thereof within the Adirondack park, after consult-  
44 ing with the Adirondack park agency, the commissioner shall promulgate  
45 by order the final freshwater wetlands map. Such order shall not be  
46 promulgated less than sixty days from the date of the hearing required  
47 by subdivision four hereof. A copy of the order, together with a copy of  
48 such map or relevant portion thereof shall be filed in the office of the  
49 clerk of each local government in which each such wetland or a portion  
50 thereof is located and, in the case of a map for any area within the  
51 Adirondack park, with the Adirondack park agency. The commissioner shall  
52 simultaneously give notice of such order to each owner of lands, as  
53 shown on the latest completed tax assessment rolls, designated as such  
54 wetlands by mailing a copy of such order to such owner by certified mail  
55 in any case where a notice by certified mail was not sent pursuant to  
56 subdivision four hereof, and in all other cases by first class mail. The

1 commissioner shall also give notice of such order at such time to the  
2 chief administrative officer of each local government within the bounda-  
3 ries of which any such wetland or a portion thereof is located. At the  
4 time of filing with such clerk or clerks, the commissioner shall also  
5 cause a copy of such order to be published in at least two newspapers  
6 having general circulation in the area where such wetlands are located.]  
7 AFTER CONSIDERATION OF COMMENTS FROM THE PUBLIC THE COMMISSIONER MAY  
8 MAKE ALTERATIONS TO THE DRAFT MAP CONSISTENT WITH SECTION 24-0107 OF  
9 THIS ARTICLE. THE COMMISSIONER SHALL FINALIZE THE MAP AND FILE A COPY OF  
10 THE MAP WITH THE OFFICE OF THE CLERK OF EACH LOCAL GOVERNMENT WITH  
11 JURISDICTION OVER PART OR ALL OF THE REGION SHOWN ON THE MAP.

12 6. Except as provided in subdivision eight of this section, the  
13 commissioner shall supervise the maintenance of such boundary maps,  
14 which shall be available to the public for inspection and examination at  
15 the regional office of the department in which the wetlands are wholly  
16 or partly located and in the office of the clerk of each county in which  
17 each such wetland or a portion thereof is located. The commissioner may  
18 readjust the map thereafter to clarify the boundaries of the wetlands,  
19 to correct any errors on the map, to effect any additions, deletions or  
20 technical changes on the map, and to reflect changes as have occurred as  
21 a result of the granting of permits pursuant to section 24-0703 of this  
22 article, or natural changes which may have occurred through erosion,  
23 accretion, or otherwise. Notice of such readjustment shall be given in  
24 the same manner as set forth in subdivision [five] FOUR of this section  
25 for the [promulgation] DEVELOPMENT of final freshwater wetlands maps.

26 S 4. Subdivisions 1, 2 and 4 of section 24-0701 of the environmental  
27 conservation law, subdivisions 1 and 2 as amended by chapter 654 of the  
28 laws of 1977 and subdivision 4 as amended by chapter 697 of the laws of  
29 1979, are amended and a new subdivision 9 is added to read as follows:

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

35 2. Activities subject to regulation UNDER SUBDIVISION ONE OF THIS  
36 SECTION shall include SUBDIVISION OF PARCELS OF LAND CONTAINING FRESHWA-  
37 TER WETLANDS AND any form of draining, dredging, excavation, removal of  
38 soil, mud, sand, shells, gravel or other aggregate from any freshwater  
39 wetland, either directly or indirectly; and any form of dumping, fill-  
40 ing, or depositing of any soil, stones, sand, gravel, mud, rubbish or  
41 fill of any kind, either directly or indirectly; erecting any struc-  
42 tures, roads, the driving of pilings, or placing of any other  
43 obstructions whether or not changing the ebb and flow of the water; any  
44 form of pollution, including but not limited to, installing a septic  
45 tank, running a sewer outfall, discharging sewage treatment effluent or  
46 other liquid wastes into or so as to drain into a freshwater wetland;  
47 and any other activity which substantially impairs any of the several  
48 functions served by freshwater wetlands or the benefits derived there-  
49 from which are set forth in section 24-0105 of this article. These  
50 activities are subject to regulation whether or not they occur upon the  
51 wetland itself, if they impinge upon or otherwise substantially affect  
52 the wetlands and are located not more than one hundred feet from the  
53 boundary of such wetland. Provided, that a greater distance from any  
54 such wetland may be regulated pursuant to this article by the appropri-  
55 ate local government or by the department, whichever has jurisdiction  
56 over such wetland, where necessary to protect and preserve the wetland.

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

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

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

22 5. [Prior to the promulgation of the final freshwater wetlands map in  
23 a particular area and the implementation of a freshwater wetlands  
24 protection law or ordinance, no person shall conduct, or cause to be  
25 conducted, any activity for which a permit is required under section  
26 24-0701 of this article on any freshwater wetland unless he has obtained  
27 a permit from the commissioner under this section.] Any person may  
28 inquire of the department as to whether or not a given parcel of land  
29 [will be designated] INCLUDES a freshwater wetland subject to regu-  
30 lation. The department shall give a definite answer in writing within  
31 thirty days of such request as to [whether] THE STATUS OF such parcel  
32 [will or will not be so designated]. Provided that, in the event that  
33 weather or ground conditions prevent the department from making a deter-  
34 mination within thirty days, it may extend such period until a determi-  
35 nation can be made. Such answer in the affirmative shall be reviewable  
36 pursuant to title eleven of this article; such an answer in the negative  
37 shall be a complete defense to the enforcement of this article as to  
38 such parcel of land. [The commissioner may by regulation adopted after  
39 public hearing exempt categories or classes of wetlands or individual  
40 wetlands which he determines not to be critical to the furtherance of  
41 the policies and purposes of this article.]

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

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

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

52 1. [Upon completion of the freshwater wetlands map of the state, or of  
53 any selected section or region thereof, the commissioner shall proceed  
54 to classify freshwater wetlands so designated thereon according to their  
55 most appropriate uses, in] IN light of the values set forth in section  
56 24-0105 of this article and the present conditions of [such] FRESHWATER

1 wetlands[. The], THE commissioner shall determine what uses of [such]  
2 FRESHWATER wetlands are most compatible with the foregoing and shall  
3 prepare minimum land use regulations to permit only such compatible  
4 uses. [The classifications may cover freshwater wetlands in more than  
5 one governmental subdivision. Permits pursuant to section 24-0701 of  
6 this article are required whether or not a classification has been  
7 promulgated.]  
8 S 8. Section 24-1305 of the environmental conservation law is  
9 REPEALED.  
10 S 9. This act shall take effect on the ninetieth day after it shall  
11 have become a law.