

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LANZA -- 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 requiring notice to adjacent landowners where certain development is proposed in wetlands in a city with a population of one million or more

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

1 Section 1. Section 25-0402 of the environmental conservation law, as
2 added by chapter 790 of the laws of 1973, subdivision 2 as added by
3 chapter 233 of the laws of 1979, is amended to read as follows:
4 S 25-0402. Application for permits.
5 1. Any person proposing to conduct or cause to be conducted an activ-
6 ity regulated under this act upon any inventoried tidal wetland shall
7 file an application for a permit with the commissioner, in such form and
8 containing such information as the commissioner may prescribe. The
9 applicant shall have the burden of demonstrating that the proposed
10 activity will be in complete accord with the policy and provisions of
11 this act. Such application shall include a detailed description of the
12 proposed work and a map showing the area of tidal wetland directly
13 affected, with the location of the proposed work thereon, together with
14 the names of the owners of record of adjacent lands and the known claim-
15 ants of water rights in or adjacent to the tidal wetlands of whom the
16 applicant has notice. The commissioner shall cause a copy of such appli-
17 cation to be mailed to the chief administrative officer in the munici-
18 pality where the proposed work or any part of it is located. UPON
19 RECEIPT OF SUCH APPLICATION BY A CITY WITH A POPULATION OF ONE MILLION
20 OR MORE, SUCH CITY SHALL CAUSE A NOTICE OF SUCH APPLICATION TO BE MAILED
21 TO OWNERS OF RECORD OF LAND WHICH IS LOCATED WITHIN ONE THOUSAND FEET OF
22 THE PROPOSED ACTIVITY.

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

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1 2. NO SOONER THAN THIRTY DAYS AND NOT LATER THAN SIXTY DAYS AFTER THE
2 RECEIPT OF AN APPLICATION BY A CITY WITH A POPULATION OF ONE MILLION OR
3 MORE, AND AFTER NOTICE OF APPLICATION HAS BEEN PUBLISHED BY THE APPLI-
4 CANT IN TWO NEWSPAPERS HAVING A GENERAL CIRCULATION IN THE AREA, THE
5 COMMISSIONER SHALL HOLD A PUBLIC HEARING ON SUCH APPLICATION AT A SUIT-
6 ABLE LOCATION IN SUCH CITY WHERE THE AFFECTED WETLAND IS SITUATED UNLESS
7 NO NOTICE OF OBJECTION HAS BEEN FILED OR UNLESS THE COMMISSIONER FINDS
8 THE ACTIVITY TO BE OF SUCH A MINOR NATURE AS NOT TO AFFECT OR ENDANGER
9 THE BALANCE OF SYSTEMS WITHIN THE WETLANDS, IN WHICH CASE THE COMMIS-
10 SIONER MAY, IN THE EXERCISE OF DISCRETION, DISPENSE WITH SUCH HEARING.
11 WHERE THE COMMISSIONER FINDS THAT A HEARING IS NOT NECESSARY, A DECISION
12 SETTING FORTH REASONS THEREFOR SHALL BE PREPARED, SHALL BE A MATTER OF
13 PUBLIC RECORD AND SHALL BE MAILED TO THE CITY AND THE OWNERS OF RECORD
14 OF PROPERTY LOCATED WITHIN ONE THOUSAND FEET OF THE WETLANDS WHERE THE
15 PROPOSED WORK OR ANY PART OF IT IS LOCATED AND TO ALL PERSONS WHO FILED
16 A STATEMENT FOLLOWING THE PUBLICATION OF SUCH NOTICE OF APPLICATION. ALL
17 OWNERS OF RECORD OF LAND WHICH IS LOCATED WITHIN ONE THOUSAND FEET OF
18 THE PROPOSED ACTIVITY AND THE LOCAL GOVERNMENTS WHERE THE PROPOSED
19 ACTIVITY IS LOCATED SHALL BE NOTIFIED BY CERTIFIED MAIL OF THE HEARING
20 NOT LESS THAN TWENTY-ONE DAYS PRIOR TO THE DATE SET FOR SUCH HEARING.
21 THE APPLICANT SHALL CAUSE NOTICE OF SUCH HEARING TO BE PUBLISHED IN TWO
22 NEWSPAPERS HAVING A GENERAL CIRCULATION IN THE AREA WHERE THE AFFECTED
23 WETLANDS ARE LOCATED AT LEAST TWENTY-ONE DAYS PRIOR TO THE HEARING. ALL
24 APPLICATIONS AND MAPS AND DOCUMENTS RELATING THERETO SHALL BE OPEN FOR
25 PUBLIC INSPECTION AT THE OFFICE OF THE CLERK OF THE COUNTY IN WHICH THE
26 WETLAND IS SITUATED. AT SUCH HEARING ANY PERSON OR PERSONS FILING A
27 REQUEST FOR A HEARING OR A TIMELY NOTICE OF APPEARANCE MAY APPEAR AND BE
28 HEARD.

29 3. The rules and regulations adopted by the department to implement
30 this article and the provisions of article 70 of this chapter and rules
31 and regulations adopted thereunder shall govern permit applications,
32 renewals, modifications, suspensions and revocations under this article,
33 PROVIDED HOWEVER, THAT AFTER THE DEPARTMENT HAS GIVEN NOTICE TO AN
34 APPLICANT THAT AN APPLICATION IS COMPLETE, OR THE APPLICATION IS DEEMED
35 COMPLETE, THE APPLICANT SHALL CAUSE A NOTICE OF COMPLETION OF THE APPLI-
36 CATION TO BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE
37 AFFECTED AREA AS PROVIDED IN RULES AND REGULATIONS OF THE DEPARTMENT.

38 S 2. Subdivisions 1, 2 and 3 of section 24-0703 of the environmental
39 conservation law, subdivisions 1 and 2 as amended and subdivision 3 as
40 added by chapter 233 of the laws of 1979, are amended to read as
41 follows:

42 1. Any person proposing to conduct or cause to be conducted a regu-
43 lated activity upon any freshwater wetland shall file an application for
44 a permit with the clerk of the local government having jurisdiction or
45 the department, as the case may be. Review of the application shall be
46 made by the local government or the commissioner, as the case may be, in
47 accordance with applicable law and such rules hereunder as may be
48 adopted by the commissioner. Such application shall include a detailed
49 description of the proposed activity and a map showing the area of
50 freshwater wetland directly affected, with the location of the proposed
51 activity thereon. The clerk or commissioner shall cause notice of such
52 application to be mailed to all local governments where the proposed
53 activity or any part of it is located. UPON RECEIPT OF SUCH APPLICATION
54 BY A CITY WITH A POPULATION OF ONE MILLION OR MORE, SUCH CITY SHALL
55 CAUSE A NOTICE OF SUCH APPLICATION TO BE MAILED TO OWNERS OF RECORD OF
56 LAND WHICH IS LOCATED WITHIN ONE THOUSAND FEET OF THE PROPOSED ACTIVITY.

1 2. No sooner than thirty days and not later than sixty days after the
2 receipt by a local government of an application, and after notice of
3 application has been published by the applicant in two newspapers having
4 a general circulation in the area, the local government OR THE COMMIS-
5 SIONER shall hold a public hearing on such application at a suitable
6 location in the local government where the affected wetland is situated
7 unless no notice of objection has been filed or unless the [local
8 government finds the] activity HAS BEEN FOUND to be of such a minor
9 nature as not to affect or endanger the balance of systems within the
10 wetlands, in which case the local government OR THE COMMISSIONER may, in
11 the exercise of discretion, dispense with such hearing. Where the local
12 government OR THE COMMISSIONER finds that a hearing is not necessary, a
13 decision setting forth reasons therefor shall be prepared, shall be a
14 matter of public record and shall be mailed to all local governments,
15 AND IN A CITY WITH A POPULATION OF ONE MILLION OR MORE TO OWNERS OF
16 RECORD OF PROPERTY LOCATED WITHIN ONE THOUSAND FEET OF THE WETLANDS,
17 where the proposed work or any part of it is located and to all persons
18 who filed a statement with the local government OR THE COMMISSIONER,
19 following the publication of such notice of application. All owners of
20 record of the adjacent land, AND, IN A CITY WITH A POPULATION OF ONE
21 MILLION OR MORE ALL OWNERS OF RECORD OF PROPERTY WHICH IS LOCATED WITHIN
22 ONE THOUSAND FEET OF THE PROPOSED ACTIVITY, and the local governments
23 where the proposed activity is located shall be notified by certified
24 mail of the hearing not less than [fifteen] TWENTY-ONE days prior to the
25 date set for such hearing. The local government OR THE COMMISSIONER
26 shall cause notice of such hearing to be published in two newspapers
27 having a general circulation in the area where the affected freshwater
28 wetlands are located. All applications and maps and documents relating
29 thereto shall be open for public inspection at the office of the clerk
30 of the local government, OR IN A CITY WITH A POPULATION OF ONE MILLION
31 OR MORE, IN THE OFFICE OF THE CLERK OF THE COUNTY in which the wetland
32 is situated. At such hearing any person or persons filing a request for
33 a hearing or a timely notice of appearance may appear and be heard.

34 3. In addition to the provisions of article 70 of this chapter and
35 rules and regulations adopted thereunder, the rules and regulations
36 adopted by the department pursuant to this article to implement its
37 processing of permit applications, renewals, modifications, suspensions
38 and revocations shall govern permit administration by the department
39 under this article, provided however, that after the department has
40 given notice to an applicant that an application is complete, or the
41 application is deemed complete, the applicant shall cause a notice of
42 COMPLETION OF THE application to be published in a newspaper of general
43 circulation in the affected area as provided in rules and regulations of
44 the department.

45 S 3. This act shall take effect immediately.