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

S. 1455--A A. 1408--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

January 7, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to local tidal wetlands protection

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

Section 1. Article 25 of the environmental conservation law is amended by adding a new title 5 to read as follows:

TITLE 5

LOCAL IMPLEMENTATION

SECTION 25-0501. LOCAL TIDAL WETLANDS PROTECTION PROCEDURES.
25-0503. TRANSFER OF FUNCTION TO COUNTY; SUPERSESSION BY DEPARTMENT.
25-0505. EXEMPTION FROM LOCAL IMPLEMENTATION.
25-0507. RESERVATION OF LOCAL JURISDICTION.
25-0509. RELATIONSHIP TO OTHER LAWS.

S 25-0501. LOCAL TIDAL WETLANDS PROTECTION PROCEDURES.

1. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND TWELVE, EACH LOCAL GOVERNMENT MAY ADOPT, AMEND, AND, UPON THE FILING OF THE APPROPRIATE TIDAL WETLANDS MAP, IMPLEMENT A TIDAL WETLANDS PROTECTION LAW OR ORDINANCE IN ACCORDANCE WITH THIS ARTICLE TO BE APPLICABLE TO ALL TIDAL

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

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WETLANDS WHOLLY OR PARTIALLY WITHIN ITS JURISDICTION. NO TIDAL WETLANDS PROTECTION LAW OR ORDINANCE ADOPTED BY A COUNTY PURSUANT TO THIS SECTION SHALL BE APPLICABLE WITHIN THE BOUNDARIES OF ANY CITY, TOWN OR VILLAGE WHICH HAS ADOPTED AND IS IMPLEMENTING A LOCAL TIDAL WETLANDS PROTECTION LAW OR ORDINANCE CONSISTENT WITH THIS ARTICLE.

2. SUCH TIDAL WETLANDS PROTECTION LAW OR ORDINANCE MAY BE IN SUCH FORM AND WITH SUCH PROCEDURES PRESCRIBED AS MAY BE DETERMINED BY THE LOCAL GOVERNMENT ADOPTING THE SAME, OR IT MAY SET FORTH THE PROCEDURES AND CONCEPTS CONTAINED IN THIS ARTICLE; PROVIDED, HOWEVER, THAT NO LOCAL TIDAL WETLANDS PROTECTION LAW OR ORDINANCE ENACTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE LESS PROTECTIVE OF TIDAL WETLANDS OR EFFECTIVENESS OF ADMINISTRATIVE AND JUDICIAL REVIEW, THAN THE PROCEDURES SET FORTH IN THIS ARTICLE, NOR SHALL SUCH LOCAL LAW OR ORDINANCE AFFECT THE ACTIVITIES EXEMPTED FROM PERMIT BY SECTION 25-0401 OF THIS ARTICLE.

3. ADOPTION BY A LOCAL GOVERNMENT, PURSUANT TO THIS ARTICLE, OF A LOCAL TIDAL WETLANDS PROTECTION LAW OR ORDINANCE BY REFERENCE TO THE PROCEDURES AND CONCEPTS SET FORTH IN THIS SECTION SHALL BE SUFFICIENT IF REFERENCE IS MADE TO THE PROCEDURES AND CONCEPTS OF THIS ARTICLE WITH EXCEPTIONS, ADDITIONS, AND MODIFICATIONS THERETO NOTED; AND THE ADOPTION, ONCE EFFECTED, SHALL INCLUDE SUBSEQUENT STATUTORY AMENDMENTS TO THIS ARTICLE AS AFORESAID; SUBJECT, AGAIN, TO EXCEPTION, ADDITION, OR MODIFICATION BY SUCH MUNICIPALITY, WITHOUT TIME LIMITATION. AT ANY TIME AFTER A LOCAL ADOPTION OF THE PROCEDURES CONTAINED IN THIS ARTICLE, A LOCAL GOVERNMENT SUBJECT TO THIS SECTION MAY RESCIND ITS ADOPTION THEREOF AND SIMULTANEOUSLY ADOPT A LOCAL TIDAL WETLANDS PROTECTION PROCEDURE IN ACCORDANCE WITH SUBDIVISIONS 1 AND 2 OF THIS SECTION.

4. IF A CITY, TOWN OR VILLAGE FAILS TO ADOPT AND IMPLEMENT A TIDAL WETLANDS PROTECTION LAW OR ORDINANCE IN ACCORDANCE WITH THIS ARTICLE BY THE DATE THE APPLICABLE TIDAL WETLANDS MAP IS FILED BY THE DEPARTMENT, IT SHALL BE DEEMED TO HAVE TRANSFERRED THE FUNCTION TO THE COUNTY IN ACCORDANCE WITH SECTION 25-0503 OF THIS TITLE. IF THE COUNTY FAILS WITHIN NINETY DAYS AFTER THE DATE OF FILING OF THE APPLICABLE TIDAL WETLANDS MAP OR BY SEPTEMBER FIRST, TWO THOUSAND TWELVE, WHICHEVER IS LATER, TO ADOPT AND IMPLEMENT A TIDAL WETLANDS PROTECTION LAW OR ORDINANCE IN ACCORDANCE WITH THIS ARTICLE, IT SHALL BE DEEMED TO HAVE TRANSFERRED THE FUNCTION TO THE DEPARTMENT. WITHIN THIRTY DAYS AFTER THE ADOPTION OF A TIDAL WETLANDS PROTECTION LAW OR ORDINANCE PURSUANT TO THIS ARTICLE, THE LOCAL GOVERNMENT SHALL NOTIFY THE DEPARTMENT THEREOF, UNDER SUCH TERMS AND CONDITIONS AS THE DEPARTMENT MAY PRESCRIBE, TOGETHER WITH ITS TECHNICAL AND ADMINISTRATIVE CAPACITY TO ADMINISTER THE ACT. FAILURE OF A LOCAL GOVERNMENT TO GIVE SUCH NOTICE SHALL CONSTITUTE A TRANSFER OF FUNCTION PURSUANT TO THIS SUBDIVISION AND SECTION 25-0503 OF THIS TITLE.

5. A LOCAL GOVERNMENT OR THE DEPARTMENT SHALL HAVE THE RIGHT, IN ITS REGULATION OF TIDAL WETLANDS WITHIN ITS JURISDICTION, TO CHARGE SUCH FEES AND EXPENSES TO AN APPLICANT FOR OFFICIAL ACTION AS SHALL ENABLE IT TO RECOVER THE COSTS INCURRED BY REASON OF SUCH APPLICATION.

6. ANY LOCAL GOVERNMENT WHICH DEFAULTS OR TRANSFERS ITS AUTHORITY PURSUANT TO SUBDIVISION FOUR OF THIS SECTION OR SECTION 25-0503 OF THIS TITLE, MAY RECOVER SUCH AUTHORITY AT ANY TIME BY ADOPTING A LOCAL TIDAL WETLAND PROTECTION LOCAL LAW OR ORDINANCE CONSISTENT WITH THIS ARTICLE AND NOTIFYING THE COUNTY AND THE DEPARTMENT OF THE ADOPTION. SUCH NOTICE SHALL BE GIVEN BY CERTIFIED MAIL WITHIN TEN DAYS OF THE ADOPTION THEREOF. SUCH LOCAL LAW OR ORDINANCE SHALL NOT BECOME EFFECTIVE IN LESS THAN SIXTY NOR MORE THAN ONE HUNDRED DAYS FROM THE ADOPTION THEREOF.

7. THE TECHNICAL SERVICES OF THE DEPARTMENT SHALL BE MADE AVAILABLE TO MUNICIPALITIES, ON A FEE BASIS, IN THE IMPLEMENTATION OF THE PROCEDURE SET FORTH IN THIS SECTION.

S 25-0503. TRANSFER OF FUNCTION TO COUNTY; SUPERSESSION BY DEPARTMENT.

1. IN THE EVENT THAT A TOWN, VILLAGE, CITY OR COUNTY SHALL CERTIFY IN WRITING, AS PROVIDED IN THIS SECTION, THAT IT DOES NOT POSSESS THE TECHNICAL CAPACITY OR THE PROCEDURES TO EFFECTIVELY CARRY OUT THE REQUIREMENTS OF THIS TITLE, SUCH LOCAL FUNCTION SHALL BE TRANSFERRED TO THE COUNTY OR THE DEPARTMENT, AS THE CASE MAY BE. THE CERTIFICATION OF THE TOWN, VILLAGE OR CITY SHALL BE BY CERTIFIED MAIL TO THE CHIEF EXECUTIVE OFFICER OF THE COUNTY, OR, IN THE CASE OF A COUNTY, TO THE COMMISSIONER.

2. IN THE EVENT THAT THE COMMISSIONER SHALL FIND THAT A LOCAL GOVERNMENT DOES NOT POSSESS THE TECHNICAL CAPACITY OR THE IMPLEMENTED PROCEDURES TO EFFECTIVELY CARRY OUT THE REQUIREMENTS OF THIS TITLE, AND THAT HIS OR HER FAILURE TO ACT WILL ENTAIL A DEFAULT, OR THE POTENTIAL OF A DEFAULT, IN TIDAL WETLANDS REGULATION, THE COMMISSIONER MAY SUPERSEDE THE LOCAL GOVERNMENT AND ORDER, ALTERNATIVELY, EITHER THAT THE LOCAL FUNCTION BE TRANSFERRED TO THE COUNTY, OR THAT THE DEPARTMENT ITSELF UNDERTAKE THE LOCAL FUNCTION, ALL TO THE EXTENT NECESSARY TO CARRY OUT THE PURPOSES OF THIS ARTICLE. THE SUPERSESSION OF THE LOCAL GOVERNMENT SHALL BE BY ORDER OF THE COMMISSIONER SENT, BY CERTIFIED MAIL, TO THE CHIEF EXECUTIVE OFFICER OF THE LOCAL GOVERNMENT INVOLVED.

3. IN THE EVENT OF TRANSFER OR SUPERSESSION UNDER SUBDIVISION 1 OR 2 OF THIS SECTION, SUBSEQUENT PROCEEDINGS SHALL BE IN ACCORDANCE WITH THE FURTHER REQUIREMENTS OF THIS ARTICLE.

S 25-0505. EXEMPTION FROM LOCAL IMPLEMENTATION.

THE COMMISSIONER, BY RULE, MAY EXEMPT FROM LOCAL IMPLEMENTATION UNDER THIS TITLE THOSE TIDAL WETLANDS WHICH, BY REASON OF THEIR SIZE OR SPECIAL CHARACTERISTICS OF UNIQUE ENVIRONMENTAL VALUE OR BY REASON OF COMMON CHARACTERISTICS, ARE APPROPRIATELY TO BE ADMINISTERED PURSUANT TO THIS ARTICLE BY THE DEPARTMENT ALONE. SUCH RULE, BASED UPON FINDINGS OF FACT MADE AFTER PUBLIC HEARING, MAY RELATE TO CLASSES OF WETLANDS BASED ON SIZE OR PARTICULAR CHARACTERISTICS, OR TO PARTICULAR WETLANDS THE CHARACTERISTICS OF WHICH MAKE THEM SUBJECT TO THE EXERCISE OF THE COMMISSIONER'S DISCRETION PURSUANT TO THIS SECTION. THE COMMISSIONER SHALL MAKE AN ORDER TO SUCH EFFECT IN EACH SUCH INSTANCE AND SEND A CERTIFIED COPY THEREOF TO THE EXECUTIVE OFFICER OF EACH LOCAL GOVERNMENT AFFECTED THEREBY WITHIN TEN DAYS OF HIS OR HER SIGNING THE SAME; SUCH ORDER SHALL NOT TAKE EFFECT UNTIL FORTY DAYS AFTER SUCH SIGNING.

S 25-0507. RESERVATION OF LOCAL JURISDICTION.

EXCEPT AS PROVIDED IN THIS ARTICLE, JURISDICTION OVER ALL AREAS WHICH WOULD QUALIFY AS TIDAL WETLANDS IS RESERVED TO THE CITY, TOWN OR VILLAGE IN WHICH THEY ARE WHOLLY OR PARTIALLY LOCATED, AND THE IMPLEMENTATION OF THIS ARTICLE WITH RESPECT THERETO IS THE RESPONSIBILITY OF SUCH CITY, TOWN OR VILLAGE, IN ACCORDANCE WITH SECTION 25-0501 OF THIS TITLE AND TITLE 23 OF ARTICLE 71 OF THIS CHAPTER, EXCEPT THAT A CITY, TOWN OR VILLAGE IN THE EXERCISE OF ITS POWERS UNDER THIS SECTION, SHALL NOT BE SUBJECT TO THE PROVISIONS OF SUBDIVISION 4 OF SECTION 25-0501, SUBDIVISIONS 2 AND 3 OF SECTION 25-0503, OR SECTION 25-0505 OF THIS TITLE, BUT SHALL BE SUBJECT TO JUDICIAL REVIEW SECTION 25-0404 OF THIS ARTICLE.

S 25-0509. RELATIONSHIP TO OTHER LAWS.

NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO REMOVE FROM ANY LOCAL GOVERNMENT ANY AUTHORITY PERTAINING TO THE REGULATION OF TIDAL WETLANDS, WHETHER SUCH WETLANDS ARE UNDER THE JURISDICTION OF THE DEPARTMENT OR A COUNTY PURSUANT TO SUBDIVISION 4 OF SECTION 25-0501 OF THIS TITLE, UNDER THE COUNTY, GENERAL CITY, GENERAL MUNICIPAL, MUNICIPAL HOME RULE, TOWN,

VILLAGE, OR ANY OTHER LAW, PROVIDED, HOWEVER, THAT ANY SUCH REGULATION BY A LOCAL GOVERNMENT SHALL BE AT LEAST AS PROTECTIVE OF TIDAL WETLANDS AS THE REGULATIONS IN EFFECT PURSUANT TO THE PROVISIONS OF THIS CHAPTER OR ANY RULE OR REGULATION PROMULGATED PURSUANT TO THE PROVISIONS OF THIS ARTICLE OR PURSUANT TO A LOCAL TIDAL WETLANDS PROTECTION LAW OR ORDINANCE ADOPTED BY A COUNTY PURSUANT TO THE PROVISIONS OF SECTION 25-0501 OF THIS TITLE.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.