

366

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

---

Introduced by M. of A. CUSICK, CLARK, PHEFFER, ROSENTHAL, TITONE --  
Multi-Sponsored by -- M. of A. McENENY -- read once and referred 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 ASSEM-  
BLY, 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

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

LBD00523-01-1

1 TO OWNERS OF RECORD OF LAND WHICH IS LOCATED WITHIN ONE THOUSAND FEET OF  
2 THE PROPOSED ACTIVITY.

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

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

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

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

1 CAUSE A NOTICE OF SUCH APPLICATION TO BE MAILED TO OWNERS OF RECORD OF  
2 LAND WHICH IS LOCATED WITHIN ONE THOUSAND FEET OF THE PROPOSED ACTIVITY.

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

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

47 S 3. This act shall take effect immediately.