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

5638

2011-2012 Regular Sessions

I N A S S E M B L Y

February 24, 2011

Introduced by M. of A. SWEENEY, JAFFEE, PERRY, COOK, CAHILL, PAULIN, LAVINE, ROSENTHAL, TITUS, REILLY -- Multi-Sponsored by -- M. of A. BING, BOYLAND, CASTELLI, CLARK, COLTON, DINOWITZ, GALEF, GLICK, GOTTFRIED, JACOBS, KELLNER, LATIMER, V. LOPEZ, MAYERSOHN, McENENY, MILLMAN, O'DONNELL, PHEFFER, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the environmental conservation law, in relation to enforcement of the freshwater wetland law

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

Section 1. Section 71-2303 of the environmental conservation law, as amended by chapter 99 of the laws of 2010, is amended to read as follows:

S 71-2303. Violation; penalties.

1. Administrative sanctions. A. Any person who violates, disobeys or disregards any provision of article twenty-four, including title five and section 24-0507 [thereof] OF THIS CHAPTER or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty [of] not to exceed eleven 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 or local government. EACH VIOLATION SHALL BE A SEPARATE AND DISTINCT VIOLATION, AND, IN THE CASE OF A CONTINUING VIOLATION, EACH DAY'S CONTINUANCE THEREOF SHALL BE DEEMED A SEPARATE AND DISTINCT VIOLATION. Such penalty may be recovered in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner or local government before the matter has been referred to the attorney general; and where such matter has been referred to the attor-

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

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ney 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 or local government. [In addition,]

B. UPON DETERMINING THAT DAMAGE TO THE FUNCTIONS OR BENEFITS OF FRESHWATER WETLANDS IS OCCURRING OR IS IMMINENT AS A RESULT OF ANY VIOLATION OF ARTICLE TWENTY-FOUR OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO (I) ACTIVITY TAKING PLACE REQUIRING A PERMIT UNDER ARTICLE TWENTY-FOUR OF THIS CHAPTER BUT FOR WHICH NO PERMIT HAS BEEN GRANTED OR (II) FAILURE ON THE PART OF A PERMITTEE TO ADHERE TO PERMIT CONDITIONS, the commissioner or local government shall have power[, following a hearing held in conformance with the procedures set forth in section 71-1709 of this article,] to direct the violator to cease [his violation of] AND DESIST FROM VIOLATING the act [and]. IN SUCH CASES THE VIOLATOR SHALL BE PROVIDED AN OPPORTUNITY TO BE HEARD WITHIN TEN DAYS OF RECEIPT OF THE NOTICE TO CEASE AND DESIST.

C. FOLLOWING A HEARING PURSUANT TO SECTION 71-1709 OF THIS ARTICLE, THE COMMISSIONER OF LOCAL GOVERNMENT SHALL HAVE THE POWER TO DIRECT THE VIOLATOR TO CEASE AND DESIST FROM VIOLATING THE ACT AND to restore the affected freshwater wetland OR AREA IMMEDIATELY ADJACENT THERETO to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the commissioner or local government. Any such order of the commissioner or local government shall be enforceable in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner 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, 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 two thousand nor more than four thousand dollars; for a second and each subsequent offense [he] SUCH PERSON shall be guilty of a misdemeanor punishable by a fine of not less than four thousand nor more than seven thousand dollars or a term of imprisonment of not less than fifteen days nor more than six months or both. [Instead] IN ADDITION TO OR INSTEAD of these punishments, any offender may be punishable by being ordered by the court to restore the affected freshwater wetland OR AREA IMMEDIATELY ADJACENT THERETO 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 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.

3. All fines collected pursuant to this section shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

S 2. This act shall take effect on the first of December next succeeding the date on which it shall have become a law.