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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:

1 Section 1. Section 71-2303 of the environmental conservation law, as
2 amended by chapter 99 of the laws of 2010, is amended to read as
3 follows:
4 S 71-2303. Violation; penalties.
5 1. Administrative sanctions. A. Any person who violates, disobeys or
6 disregards any provision of article twenty-four, including title five
7 and section 24-0507 [thereof] OF THIS CHAPTER or any rule or regulation,
8 local law or ordinance, permit or order issued pursuant thereto, shall
9 be liable to the people of the state for a civil penalty [of] not to
10 exceed eleven thousand dollars for every such violation, to be assessed,
11 after a hearing or opportunity to be heard upon due notice and with the
12 rights to specification of the charges and representation by counsel at
13 such hearing, by the commissioner or local government. EACH VIOLATION
14 SHALL BE A SEPARATE AND DISTINCT VIOLATION, AND, IN THE CASE OF A
15 CONTINUING VIOLATION, EACH DAY'S CONTINUANCE THEREOF SHALL BE DEEMED A
16 SEPARATE AND DISTINCT VIOLATION. Such penalty may be recovered in an
17 action brought by the attorney general at the request and in the name of
18 the commissioner or local government in any court of competent jurisdic-
19 tion. Such civil penalty may be released or compromised by the commis-
20 sioner or local government before the matter has been referred to the
21 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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1 ney general, any such penalty may be released or compromised and any
2 action commenced to recover the same may be settled and discontinued by
3 the attorney general with the consent of the commissioner or local
4 government. [In addition,]

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

17 C. FOLLOWING A HEARING PURSUANT TO SECTION 71-1709 OF THIS ARTICLE,
18 THE COMMISSIONER OF LOCAL GOVERNMENT SHALL HAVE THE POWER TO DIRECT THE
19 VIOLATOR TO CEASE AND DESIST FROM VIOLATING THE ACT AND to restore the
20 affected freshwater wetland OR AREA IMMEDIATELY ADJACENT THERETO to its
21 condition prior to the violation, insofar as that is possible within a
22 reasonable time and under the supervision of the commissioner or local
23 government. Any such order of the commissioner or local government shall
24 be enforceable in an action brought by the attorney general at the
25 request and in the name of the commissioner or local government in any
26 court of competent jurisdiction. Any civil penalty or order issued by
27 the commissioner or local government pursuant to this subdivision shall
28 be reviewable in a proceeding pursuant to article seventy-eight of the
29 civil practice law and rules.

30 2. Criminal sanctions. Any person who violates any provision of arti-
31 cle twenty-four of this chapter, including any rule or regulation, local
32 law or ordinance, permit or order issued pursuant thereto, shall, in
33 addition, for the first offense, be guilty of a violation punishable by
34 a fine of not less than two thousand nor more than four thousand
35 dollars; for a second and each subsequent offense [he] SUCH PERSON shall
36 be guilty of a misdemeanor punishable by a fine of not less than four
37 thousand nor more than seven thousand dollars or a term of imprisonment
38 of not less than fifteen days nor more than six months or both.
39 [Instead] IN ADDITION TO OR INSTEAD of these punishments, any offender
40 may be punishable by being ordered by the court to restore the affected
41 freshwater wetland OR AREA IMMEDIATELY ADJACENT THERETO to its condition
42 prior to the offense, insofar as that is possible. The court shall spec-
43 ify a reasonable time for the completion of such restoration, which
44 shall be effected under the supervision of the commissioner or local
45 government. Each offense shall be a separate and distinct offense and,
46 in the case of a continuing offense, each day's continuance thereof
47 shall be deemed a separate and distinct offense.

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

51 S 2. This act shall take effect on the first of December next succeed-
52 ing the date on which it shall have become a law.