

2797

2011-2012 Regular Sessions

I N S E N A T E

February 1, 2011

Introduced by Sen. SQUADRON -- 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 and the state finance law, in relation to the preservation of freshwater wetland areas; and to repeal section 24-1305 of the environmental conservation law relating thereto

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

1 Section 1. Subdivision 7 of section 24-0105 of the environmental
2 conservation law, as added by chapter 614 of the laws of 1975 and as
3 renumbered by chapter 654 of the laws of 1977, is amended to read as
4 follows:

5 7. Any loss of freshwater wetlands deprives the people of the state of
6 some or all of the many and multiple benefits to be derived from
7 wetlands, to wit:

8 (a) flood and storm control by the hydrologic absorption and storage
9 capacity of freshwater wetlands;

10 (b) wildlife habitat by providing breeding, nesting and feeding
11 grounds and cover for many forms of wildlife, wildfowl and shorebirds,
12 including migratory wildfowl and rare, ENDANGERED OR THREATENED species
13 such as the bald eagle and osprey;

14 (c) protection of subsurface water resources and provision for valu-
15 able watersheds and recharging ground water supplies;

16 (d) recreation by providing areas for hunting, fishing, boating,
17 hiking, bird watching, photography, camping and other uses;

18 (e) pollution treatment by serving as biological and chemical oxida-
19 tion basins;

20 (f) erosion control by serving as sedimentation areas and filtering
21 basins, absorbing silt and organic matter and protecting channels and
22 harbors;

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

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1 (g) education and scientific research by providing readily accessible
2 outdoor bio-physical laboratories, living classrooms and vast training
3 and education resources; [and]

4 (h) open space and aesthetic appreciation by providing often the only
5 remaining open areas along crowded river fronts and coastal Great Lakes
6 regions; [and]

7 (i) sources of nutrients in freshwater food cycles and nursery grounds
8 and sanctuaries for freshwater fish[.];

9 (J) PRESERVATION OF PLANT SPECIES THAT ARE RARE, ENDANGERED, OR
10 EXPLOITABLY VULNERABLE AS DEFINED IN SECTION 9-1503 OF THIS CHAPTER; AND

11 (K) PRESERVATION OF COMMUNITIES OF PLANTS AND ANIMALS THAT ARE DEEMED
12 BY THE COMMISSIONER TO BE RARE IN THE STATE OR IN A REGION OF THE STATE.

13 S 2. Section 24-0107 of the environmental conservation law, as amended
14 by chapter 654 of the laws of 1977, is amended to read as follows:

15 S 24-0107. Definitions.

16 1. "Freshwater wetlands" means lands and waters of the state [as shown
17 on the freshwater wetlands map] which contain any or all of the follow-
18 ing:

19 (a) lands and submerged lands commonly called marshes, swamps,
20 sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation
21 of the following types:

22 (1) wetland trees, which depend upon seasonal or permanent flooding or
23 sufficiently water-logged soils to give them a competitive advantage
24 over other trees; including, among others, red maple (*Acer rubrum*),
25 willows (*Salix* spp.), black spruce (*Picea mariana*); swamp white oak
26 (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus*
27 *nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*),
28 and Larch (*Larix laricina*);

29 (2) wetland shrubs, which depend upon seasonal or permanent flooding
30 or sufficiently water-logged soils to give them a competitive advantage
31 over other shrubs; including, among others, alder (*Alnus* spp.), button-
32 bush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*),
33 dogwoods (*Cornus* spp.), and leatherleaf (*Chamaedaphne calyculata*);

34 (3) emergent vegetation, including, among others, cattails (*Typha*
35 spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.),
36 arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed
37 (*Phragmites communis*), wildrice (*Zizania aquatica*), bur-reeds (*Spargani-*
38 *um* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife
39 (*Decodon verticillatus*); and water plantain (*Alisma plantago-aquatica*);

40 (4) rooted, floating-leaved vegetation; including, among others,
41 water-lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and
42 spatterdock (*Nuphar* spp.);

43 (5) free-floating vegetation; including, among others, duckweed (*Lemna*
44 spp.), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia* spp.);

45 (6) wet meadow vegetation, which depends upon seasonal or permanent
46 flooding or sufficiently water-logged soils to give it a competitive
47 advantage over other open land vegetation; including, among others,
48 sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice
49 cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*),
50 swamp loosestrife (*Decodon verticillatus*), and spikerush (*Eleocharis*
51 spp.);

52 (7) bog mat vegetation; including, among others, sphagnum mosses
53 (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf
54 (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and
55 cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

1 (8) submergent vegetation; including, among others, pondweeds (Pota-
2 mogeton spp.), naiads (Najas spp.), bladderworts (Utricularia spp.),
3 wild celery (Vallisneria americana), coontail (Ceratophyllum demersum),
4 water milfoils (Myriophyllum spp.), muskgrass (Chara spp.), stonewort
5 (Nitella spp.), water weeds (Elodea spp.), and water smartweed (Polygo-
6 num amphibium);

7 (b) lands and submerged lands containing remnants of any vegetation
8 that is not aquatic or semi-aquatic that has died because of wet condi-
9 tions over a sufficiently long period, provided that such wet conditions
10 do not exceed a maximum seasonal water depth of six feet and provided
11 further that such conditions can be expected to persist indefinitely,
12 barring human intervention;

13 (c) lands and waters substantially enclosed by aquatic or semi-aquatic
14 vegetation as set forth in paragraph (a) OF THIS SUBDIVISION or by dead
15 vegetation as set forth in paragraph (b) OF THIS SUBDIVISION, the regu-
16 lation of which is necessary to protect and preserve the aquatic and
17 semi-aquatic vegetation; and

18 (d) the waters overlying the areas set forth in PARAGRAPHS (a) and (b)
19 OF THIS SUBDIVISION and the lands underlying PARAGRAPH (c) OF THIS
20 SUBDIVISION.

21 2. "Freshwater wetlands map" shall mean [a map promulgated by the
22 department pursuant to section 24-0301 of this article on which are
23 indicated the boundaries] MAPS OF THE STATE'S WETLANDS WHICH SERVE THE
24 PURPOSE OF EDUCATING THE PUBLIC ON THE LOCATION of any freshwater
25 wetlands.

26 3. "Boundaries of a freshwater wetland" shall mean the outer limit of
27 the vegetation specified in paragraphs (a) and (b) of subdivision one of
28 THIS section [24-0107] and of the lands and waters specified in para-
29 graph (c) of such subdivision.

30 4. "Local government" shall mean a village, town, city, or county.

31 5. "State agency" shall mean any state department, bureau, commis-
32 sion, board or other agency, public authority or public benefit corpo-
33 ration.

34 6. "Person" means any corporation, firm, partnership, association,
35 trust, estate, one or more individuals, and any unit of government or
36 agency or subdivision thereof, including the state.

37 7. "Board" shall mean the freshwater wetland appeals board.

38 8. "Pollution" shall mean the presence in the environment of man-in-
39 duced conditions or contaminants in quantities or characteristics which
40 are or may be injurious to human, plant or wildlife, or other animal
41 life or to property.

42 S 3. Section 24-0301 of the environmental conservation law, as amended
43 by chapter 654 of the laws of 1977 and subdivisions 4, 5 and 6 as
44 amended by chapter 16 of the laws of 2010, is amended to read as
45 follows:

46 S 24-0301. Commissioner's study.

47 1. The commissioner shall, as soon as practicable, conduct a study to
48 identify and map those individual freshwater wetlands in the state of
49 New York [which shall have an area of at least twelve and four-tenths
50 acres or more, or if less than twelve and four-tenths acres, (a) have,
51 in the discretion of the commissioner, and subject to review of his
52 action by the board created pursuant to title eleven of this article,
53 unusual local importance for one or more of the specific benefits set
54 forth in subdivision seven of section 24-0105] (A) AS DEFINED IN SECTION
55 24-0107 OF THIS ARTICLE or (b) THAT are located within the Adirondack
56 park and meet the definition of wetlands contained in subdivision

1 sixty-eight of section eight hundred two [of article twenty-seven] of
2 the executive law, and shall determine their characteristics. This study
3 shall, in addition to such other data as the commissioner may determine
4 to be included, consist of the freshwater wetlands inventory of the
5 department of environmental conservation, currently being made, together
6 with other available data on freshwater wetlands, whether assisted by
7 the state of New York under the tidal wetlands act or otherwise, or
8 assembled by federal or local governmental or private agencies, all of
9 which information shall be assembled and integrated, as applicable, into
10 a map of freshwater wetlands of the state of New York. Such study may,
11 in the discretion of the commissioner, be carried out on a sectional or
12 regional basis, as indicated by need, subject to overall completion in
13 an expeditious fashion subject to the terms of this chapter. This map,
14 and any orders issued pursuant to the provisions of this article, shall
15 comprise a part of the statewide environmental plan as provided for in
16 section 3-0303 of this chapter. As soon as practicable the commissioner
17 shall file with the secretary of state a detailed description of the
18 technical methods and requirements to be utilized in compiling the
19 inventory, and he OR SHE shall afford the public an opportunity to
20 submit comments thereon.

21 2. Upon completion of a freshwater wetlands inventory, the commission-
22 er shall prepare a [tentative] DRAFT freshwater wetlands map delineating
23 the boundaries of such wetlands as determined by the study and inventory
24 conducted pursuant to subdivision one of this section. The map may be
25 prepared for different sections or regions of the state separately, as
26 the commissioner shall determine. The commissioner shall consult and
27 cooperate with the Adirondack park agency in the preparation of a
28 [tentative] DRAFT freshwater wetlands map for any area within the
29 Adirondack park.

30 3. The [tentative] DRAFT freshwater wetlands map shall set forth the
31 boundaries of such wetlands as accurately as is practicable to inform
32 the owners thereof, the public and the department of the approximate
33 location of the actual boundaries of the wetlands, subject to motion for
34 delineation pursuant to this section, or more precise definition thereof
35 in the discretion of the commissioner. The commissioner shall take into
36 consideration, whenever possible, the boundaries of the local government
37 or governments within which the wetlands are located.

38 4. Upon completion of the [tentative] DRAFT freshwater wetlands map
39 for a particular area, the commissioner or his designated hearing offi-
40 cer shall hold a public hearing in that area in order to afford an
41 opportunity for any person to propose additions or deletions from such
42 map. The commissioner shall give notice of such hearing to each owner of
43 record as shown on the latest completed tax assessment rolls, of lands
44 designated as such wetlands as shown on said map and also to the chief
45 administrative officer and clerk of each local government within the
46 boundaries of which any such wetland or a portion thereof is located
47 and, in the case of a [tentative] DRAFT freshwater wetlands map for any
48 area within the Adirondack park, to the Adirondack park agency, by
49 certified mail not less than thirty days prior to the date set for such
50 hearing and shall assure that a copy of the relevant map is available
51 for public inspection at a convenient location in such local government.
52 The map filed with a local government may, at the local government's
53 request, be either a physical copy of the tentative freshwater wetlands
54 map, or, if available, a digital file that represents it. The commis-
55 sioner shall also cause notice of such hearing to be published at least
56 once, not more than thirty days nor fewer than ten days before the date

1 set for such hearing, in at least two newspapers having general circu-
2 lation in the area where such wetlands are located. The commissioner may
3 post on the department's website a digital image that represents the
4 tentative freshwater wetlands map.

5 5. After considering the testimony given at such hearing and any other
6 facts which may be deemed pertinent, after considering the rights of
7 affected property owners and the ecological balance in accordance with
8 the policy and purposes of this article, and, in the case of wetlands or
9 portions thereof within the Adirondack park, after consulting with the
10 Adirondack park agency, the commissioner shall promulgate by order the
11 final freshwater wetlands map. Such order shall not be promulgated less
12 than sixty days from the date of the hearing required by subdivision
13 four of this section. AFTER CONSIDERATION OF COMMENTS FROM THE PUBLIC
14 THE COMMISSIONER MAY MAKE ALTERATIONS TO THE DRAFT MAP CONSISTENT WITH
15 SECTION 24-0107 OF THIS ARTICLE. THE COMMISSIONER SHALL FINALIZE THE MAP
16 AND FILE A COPY OF THE MAP WITH THE OFFICE OF THE CLERK OF EACH GOVERN-
17 MENT WITH JURISDICTION OVER PART OR ALL OF THE REGION SHOWN ON THE MAP.
18 A copy of the order, together with a copy of such map or relevant
19 portion thereof shall be filed in the office of the clerk of each local
20 government in which each such wetland or a portion thereof is located
21 and, in the case of a map for any area within the Adirondack park, with
22 the Adirondack park agency. The map filed with a local government may,
23 at the local government's request, be either a physical copy of the
24 final freshwater wetlands map, or, if available, a digital file that
25 represents it. The commissioner shall simultaneously give notice of such
26 order to each owner of lands, as shown on the latest completed tax
27 assessment rolls, designated as such wetlands by mailing a copy of such
28 order to such owner by certified mail in any case where a notice by
29 certified mail was not sent pursuant to subdivision four of this
30 section, and in all other cases by first class mail. The commissioner
31 shall also give notice of such order at such time to the chief adminis-
32 trative officer of each local government within the boundaries of which
33 any such wetland or a portion thereof is located. At the time of filing
34 with such clerk or clerks, the commissioner shall also cause a copy of
35 such order to be published in at least two newspapers having general
36 circulation in the area where such wetlands are located. The commission-
37 er may post on the department's website a digital image that represents
38 the final freshwater wetlands map.

39 6. Except as provided in subdivision eight of this section, [the
40 commissioner shall supervise the maintenance of such boundary maps,
41 which shall be] FRESHWATER WETLAND MAPS SHALL BE POSTED ON THE DEPART-
42 MENT'S WEBSITE AS ELECTRONIC IMAGES SO AS TO MAKE THEM BROADLY available
43 to the public for inspection and examination. IN ADDITION, ELECTRONIC
44 IMAGES SHALL BE AVAILABLE FOR INSPECTION at the regional office of the
45 department in which the wetlands are wholly or partly located and in the
46 office of the clerk of each county in which each such wetland or a
47 portion thereof is located. The [commissioner] DEPARTMENT may readjust
48 the map AS NEEDED thereafter to clarify the boundaries of the wetlands,
49 to correct any errors on the map, to effect any additions, deletions or
50 technical changes on the map, and to reflect changes as have occurred as
51 a result of the granting of permits pursuant to section 24-0703 of this
52 article, or natural changes which may have occurred through erosion,
53 accretion, or otherwise, EXCEPT WETLANDS SHALL NOT BE REMOVED FROM THE
54 MAP IF THEY ARE REDUCED IN SIZE AS A RESULT OF PERMITTED OR UNPERMITTED
55 ACTIVITIES AND SHALL CONTINUE TO BE SUBJECT TO JURISDICTION UNDER THIS
56 ARTICLE. THE DEPARTMENT SHALL THEN CORRECT THE MAP IMAGE AND UPDATE ANY

1 ELECTRONIC IMAGE OF THE MAP PREVIOUSLY POSTED ON ITS WEBSITE TO REFLECT
2 SUCH READJUSTMENT. AT THAT TIME, THE DEPARTMENT SHALL GIVE NOTICE OF
3 SUCH MAP ADJUSTMENT TO AFFECTED LANDOWNERS AND TO THE CHIEF ADMINISTRA-
4 TIVE OFFICER OF EACH COUNTY WITHIN THE BOUNDARIES OF WHICH ANY SUCH
5 WETLAND OR A PORTION THEREOF IS LOCATED. THE DEPARTMENT SHALL ALSO
6 CAUSE NOTICE OF THE ADJUSTED MAP TO BE PUBLISHED IN AT LEAST TWO NEWSPA-
7 PERS HAVING GENERAL CIRCULATION IN THE AREA WHERE SUCH WETLANDS ARE
8 LOCATED. PROVIDED, HOWEVER, THAT WHEN THE DEPARTMENT IS NOTIFIED THAT A
9 PROPOSED ACTIVITY SUBJECT TO REGULATION MAY AFFECT ANY FRESHWATER
10 WETLANDS AS DEFINED IN THIS ARTICLE, WHETHER MAPPED OR NOT, THE DEPART-
11 MENT SHALL DETERMINE WHETHER WETLANDS ARE PRESENT AND WHETHER AN ADJUST-
12 MENT ON THE MAP, AS CURRENTLY FILED, IS NEEDED IMMEDIATELY SO AS TO
13 PROTECT THE VALUES OR MEET THE POLICIES SET FORTH IN SECTION 24-0105 OF
14 THIS ARTICLE, AND IF SO, THE DEPARTMENT SHALL PROVIDE NOTICE TO THE
15 LANDOWNER THAT SUCH LAND IS THEREBY SUBJECT TO ITS JURISDICTION AND THE
16 LANDOWNER SHALL OBTAIN A PERMIT PURSUANT TO SECTIONS 24-0701 AND 24-0703
17 OF THIS ARTICLE PRIOR TO CONDUCTING A REGULATED ACTIVITY UPON ANY FRESH-
18 WATER WETLAND, TO BE FOLLOWED EXPEDITIOUSLY THEREAFTER WITH A MAP
19 ADJUSTMENT AS PROVIDED IN THIS SUBDIVISION. Notice of such readjustment
20 shall be given in the same manner as set forth in subdivision five of
21 this section for the promulgation of final freshwater wetlands maps. In
22 addition, at the time notice is provided pursuant to subdivision five of
23 this section, the commissioner shall update any digital image of the map
24 posted on the department's website to reflect such readjustment.

25 7. Except as provided in subdivision eight of this section, the
26 [commissioner] DEPARTMENT may, upon [his] ITS own initiative, and shall,
27 upon a written request by a landowner whose land or a portion thereof
28 may be included within a wetland, or upon the written request of another
29 person or persons or an official body whose interests are shown to be
30 affected, cause to be delineated more precisely the boundary line or
31 lines of a freshwater wetland or a portion thereof. Such more precise
32 delineation of a freshwater wetland boundary line or lines shall be of
33 appropriate scale and sufficient clarity to permit the ready identifica-
34 tion of individual buildings and of other major man-made structures or
35 facilities or significant geographical features with respect to the
36 boundary of any freshwater wetland. The [commissioner] DEPARTMENT shall
37 undertake to delineate the boundary of a particular wetland or wetlands,
38 or a particular part of the boundary thereof only upon a showing by the
39 applicant therefor of good cause for such more precise delineation and
40 the establishment of such more precise line.

41 8. The supervision of the maintenance of any freshwater wetlands map
42 or portion thereof applicable to wetlands within the Adirondack park,
43 the readjustment and precise delineation of wetland boundary lines and
44 the other functions and duties ascribed to the [commissioner] DEPARTMENT
45 by [subdivisions six and seven of] this section shall be performed
46 INSIDE THE ADIRONDACK PARK by the Adirondack park agency, which shall
47 make such maps available for public inspection and examination at its
48 headquarters.

49 S 4. Section 24-0701 of the environmental conservation law, as amended
50 by chapter 654 of the laws of 1977 and subdivision 4 as amended by chap-
51 ter 697 of the laws of 1979, is amended to read as follows:

52 S 24-0701. Permits.

53 1. After issuance of the official freshwater wetlands map of the
54 state, or of any selected section or region thereof, any person desiring
55 to conduct on freshwater wetlands as so designated thereon any of the

1 regulated activities set forth in subdivision two of this section must
2 obtain a permit as provided in this title.

3 2. Activities subject to regulation UNDER SUBDIVISION ONE OF THIS
4 SECTION shall include SUBDIVISIONS OF PARCELS OF LAND CONTAINING FRESH-
5 WATER WETLANDS AND any form of draining, dredging, excavation, removal
6 of soil, mud, sand, shells, gravel or other aggregate from any freshwa-
7 ter wetland, either directly or indirectly; and any form of dumping,
8 filling, or depositing of any soil, stones, sand, gravel, mud, rubbish
9 or fill of any kind, either directly or indirectly; erecting any struc-
10 tures, roads, the driving of pilings, or placing of any other
11 obstructions whether or not changing the ebb and flow of the water; any
12 form of pollution, including but not limited to, installing a septic
13 tank, running a sewer outfall, discharging sewage treatment effluent or
14 other liquid wastes into or so as to drain into a freshwater wetland;
15 and any other activity which substantially impairs any of the several
16 functions served by freshwater wetlands or the benefits derived there-
17 from which are set forth in section 24-0105 of this article. These
18 activities are subject to regulation whether or not they occur upon the
19 wetland itself, if they impinge upon or otherwise substantially affect
20 the wetlands and are located not more than one hundred feet from the
21 boundary of such wetland. Provided, that a greater distance from any
22 such wetland may be regulated pursuant to this article by the appropri-
23 ate local government or by the department, whichever has jurisdiction
24 over such wetland, where necessary to protect and preserve the wetland.

25 3. The depositing or removal of the natural products of the freshwater
26 wetlands by recreational or commercial fishing, shell-fishing, aquacul-
27 ture, hunting or trapping shall be excluded from regulated activities,
28 where otherwise legally permitted and regulated.

29 4. [The] ON LANDS IN ACTIVE AGRICULTURAL USE, THE activities of farm-
30 ers and other landowners in grazing and watering livestock, making
31 reasonable use of water resources, harvesting natural products of the
32 wetlands, selectively cutting timber, draining land or wetlands for
33 growing agricultural products and otherwise engaging in the use of
34 wetlands or other land for growing agricultural products shall be
35 excluded from regulated activities and shall not require a permit under
36 subdivision one hereof, except that structures not required for enhance-
37 ment or maintenance of the agricultural productivity of the land and any
38 filling activities shall not be excluded hereunder, and provided that
39 the use of land [designated as a freshwater wetland upon the freshwater
40 wetlands map at the effective date thereof] THAT MEETS THE DEFINITION OF
41 A FRESHWATER WETLAND AS DEFINED IN SECTION 24-0107 OF THIS ARTICLE for
42 uses other than those referred to in this subdivision shall be subject
43 to the provisions of this article.

44 5. Public health activities, orders, and regulations of the department
45 of health shall be excluded from regulated activities. Copies of all
46 such public health orders and regulations affecting wetlands shall be
47 filed with the department of environmental conservation. The commission-
48 er may request modification of such orders or regulations if he OR SHE
49 deems such necessary to implement the [policy] POLICIES of this article.

50 6. The commissioner shall review all current mosquito control projects
51 to determine whether they are having any adverse impact on freshwater
52 wetlands. Where any adverse impact is found, the commissioner may
53 require modification of such projects if he OR SHE deems such necessary
54 for the implementation of the policies of this article.

55 7. Where dredging or filling is in navigable waters of the state or is
56 for the reconstruction or repair of certain dams and docks, and where

1 such activity also affects freshwater wetlands, any person undertaking
2 such activity must seek permission under this article as well as under
3 any other applicable law.

4 8. On any land that is being developed pursuant to a planned unit
5 development ordinance or local law where freshwater wetlands are to
6 remain as open space, development activities shall be permitted in areas
7 contiguous to such wetlands if the local government affirms that such
8 activities will not despoil said wetland.

9 9. ANY PERMIT OBTAINED SUBJECT TO SUBDIVISION ONE OF THIS SECTION
10 SHALL BE PERMANENTLY APPENDED TO THE DEED FOR THE REAL PROPERTY SUCH
11 REGULATED ACTION OCCURRED ON.

12 S 5. Subdivision 5 of section 24-0703 of the environmental conserva-
13 tion law, as amended by chapter 233 of the laws of 1979, is amended to
14 read as follows:

15 5. Prior to the promulgation of the final freshwater wetlands map in a
16 particular area and the implementation of a freshwater wetlands
17 protection law or ordinance, no person shall conduct, or cause to be
18 conducted, any activity for which a permit is required under section
19 24-0701 of this article on any freshwater wetland unless he has obtained
20 a permit from the commissioner under this section. Any person may
21 inquire of the department as to whether or not a given parcel of land
22 [will be designated] INCLUDES a freshwater wetland subject to regu-
23 lation. The department shall give a definite answer in writing within
24 thirty days of such request as to [whether] THE STATUS OF such parcel
25 [will or will not be so designated]. Provided that, in the event that
26 weather or ground conditions prevent the department from making a deter-
27 mination within thirty days, it may extend such period until a determi-
28 nation can be made. Such answer in the affirmative shall be reviewable
29 pursuant to title eleven of this article; such an answer in the negative
30 shall be a complete defense to the enforcement of this article as to
31 such parcel of land. The commissioner may by regulation adopted after
32 public hearing exempt categories or classes of wetlands or individual
33 wetlands which he determines not to be critical to the furtherance of
34 the policies and purposes of this article.

35 S 6. Subdivisions 1, 2 and 4 of section 24-0901 of the environmental
36 conservation law, subdivisions 1 and 2 as added by chapter 614 of the
37 laws of 1975 and subdivision 4 as amended by chapter 654 of the laws of
38 1977, are amended to read as follows:

39 1. Upon completion of the freshwater wetlands map, the [commissioner]
40 DEPARTMENT shall confer with local government officials in each region
41 in which the [inventory has been conducted] WETLANDS OCCUR to establish
42 a program for the protection of the freshwater wetlands of the state.

43 2. The [commissioner] DEPARTMENT may enter into cooperative agreements
44 with any city, village, town or county, or with ANY NOT-FOR-PROFIT
45 CONSERVATION ORGANIZATION OR an owner of freshwater wetlands or with any
46 one or more of them, for the purpose of preserving [and maintaining],
47 MANAGING, RESTORING AND MAINTAINING, OR OTHERWISE ENGAGING IN CONSERVA-
48 TION PRACTICES, in accordance with the policies of this article, those
49 freshwater wetlands which are within the boundaries of such city,
50 village, town [or], county, OR PRIVATE PROPERTY.

51 4. A cooperative agreement with any such village, town, city or county
52 may provide for the development by personnel and facilities of the
53 department or the payment out of funds appropriated therefor, for the
54 purpose of preserving, maintaining, MANAGING, RESTORING, or enhancing
55 such wetlands in accordance with the policies of this article, AND FOR
56 BENEFITS ACCRUED TO THE PEOPLE OF THE STATE, and for the furnishing of

1 such personnel, facilities or funds as may be agreed upon by the parties
2 to the cooperative agreement.

3 S 7. Subdivision 1 of section 24-0903 of the environmental conserva-
4 tion law, as added by chapter 614 of the laws of 1975, is amended to
5 read as follows:

6 1. Upon completion of the freshwater wetlands map of the state, or of
7 any selected section or region thereof, the commissioner shall proceed
8 to classify freshwater wetlands so designated thereon according to their
9 most appropriate uses[, in]. IN light of the values set forth in section
10 24-0105 of this article and the present conditions of [such] FRESHWATER
11 wetlands[. The], THE commissioner shall determine what uses of [such]
12 FRESHWATER wetlands are most compatible with the foregoing and shall
13 prepare minimum land use regulations to permit only such compatible
14 uses. The classifications may cover freshwater wetlands in more than
15 one governmental subdivision. Permits pursuant to section 24-0701 of
16 this article are required whether or not a classification has been
17 promulgated.

18 S 8. Section 24-1305 of the environmental conservation law is
19 REPEALED.

20 S 9. Subdivision 8 of section 70-0117 of the environmental conserva-
21 tion law, as added by section 1 of part AAA of chapter 59 of the laws of
22 2009, is amended, and a new subdivision 9 is added to read as follows:

23 8. (a) All persons required to obtain a permit from the department
24 pursuant to section 24-0701 of this chapter shall submit to the depart-
25 ment an application fee in an amount not to exceed the following:

26 [(i) fifty dollars per application for a permit for a minor project as
27 defined in this article or modification to any existing permit issued
28 pursuant to section 24-0701 of this chapter;

29 (ii) fifty dollars per application for a permit for a residential
30 project defined as associated with one single family dwelling and
31 customary appurtenances thereto;

32 (iii) one hundred dollars per application for multiple family dwelling
33 and customary appurtenances thereto;

34 (iv) two hundred dollars per application for a permit for any other
35 project as defined in this article.]

36 (I) TWO HUNDRED DOLLARS PER APPLICATION FEE FOR A PERMIT FOR A MINOR
37 PROJECT OR MODIFICATION TO AN EXISTING STRUCTURE AND FIVE CENTS PER
38 SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER AREAS;

39 (II) TWO HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
40 PROJECT ASSOCIATED WITH A SINGLE FAMILY DWELLING AND CUSTOMARY APPURTE-
41 NANCES THERETO AND FIVE CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND
42 BUFFER AREAS;

43 (III) NINE HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
44 PROJECT PLUS TEN CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER
45 AREAS.

46 (b) All persons required to obtain a permit from the department pursu-
47 ant to section 25-0402 of this chapter shall submit to the department an
48 application fee in an amount not to exceed the following:

49 [(i) two hundred dollars per application for a permit for a minor
50 project as defined in this article or modification to any existing
51 permit issued pursuant to section 25-0402 of this chapter;

52 (ii) nine hundred dollars per application for a permit for a project
53 as defined in this article.]

54 (I) TWO HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MINOR
55 PROJECT OR MODIFICATION TO AN EXISTING STRUCTURE AND FIVE CENTS PER
56 SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER AREAS;

1 (II) TWO HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
2 PROJECT ASSOCIATED WITH A SINGLE FAMILY DWELLING AND CUSTOMARY APPURTE-
3 NANCES THERETO AND FIVE CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND
4 BUFFER AREAS;

5 (III) NINE HUNDRED DOLLARS PER APPLICATION FOR A PERMIT FOR A MAJOR
6 PROJECT PLUS TEN CENTS PER SQUARE FOOT OF IMPACT TO WETLAND AND BUFFER
7 AREAS.

8 (c) All fees collected pursuant to this subdivision shall be deposited
9 into the environmental protection fund pursuant to section ninety-two-s
10 of the state finance law.

11 9. ANY NOT-FOR-PROFIT CORPORATION THAT HAS ENTERED INTO A COOPERATIVE
12 AGREEMENT WITH THE DEPARTMENT FOR THE PURPOSE OF PRESERVING, MAINTAIN-
13 ING, MANAGING, RESTORING, OR ENHANCING SUCH WETLANDS IN ACCORDANCE WITH
14 THE POLICIES OF THIS ARTICLE AND FOR BENEFITS ACCRUED TO THE PEOPLE OF
15 THE STATE, SHALL NOT BE CHARGED A FEE FOR PERMITS THAT MAY BE REQUIRED
16 FOR ACTIVITIES ASSOCIATED WITH RESTORATION OF FRESHWATER OR TIDAL
17 WETLANDS.

18 S 10. Section 71-2303 of the environmental conservation law, as
19 amended by chapter 99 of the laws of 2010, is amended to read as
20 follows:

21 S 71-2303. Violation; penalties.

22 1. Administrative sanctions. Any person who violates, disobeys or
23 disregards any provision of article twenty-four, including title five OF
24 SAID ARTICLE and section 24-0507 thereof or any rule or regulation,
25 local law or ordinance, OR permit or order issued pursuant thereto,
26 shall be liable to the people of the state for a civil penalty of not to
27 exceed eleven thousand dollars for every such violation, to be assessed,
28 after a hearing or opportunity to be heard upon due notice and with the
29 rights to specification of the charges and representation by counsel at
30 such hearing, by the [commissioner] DEPARTMENT or local government. Such
31 penalty may be recovered in an action brought by the attorney general at
32 the request and in the name of the [commissioner] DEPARTMENT or local
33 government in any court of competent jurisdiction. Such civil penalty
34 may be released or compromised by the [commissioner] DEPARTMENT or local
35 government before the matter has been referred to the attorney general;
36 and where such matter has been referred to the attorney general, any
37 such penalty may be released or compromised and any action commenced to
38 recover the same may be settled and discontinued by the attorney general
39 with the consent of the [commissioner] DEPARTMENT or local government.
40 In addition, the [commissioner] DEPARTMENT or local government shall
41 have power, following a hearing held in conformance with the procedures
42 set forth in section 71-1709 of this article, to direct the violator to
43 cease his OR HER violation of the act and to restore the affected fresh-
44 water wetland AND ITS REGULATED ADJACENT AREA to its condition prior to
45 the violation, insofar as that is possible within a reasonable time and
46 under the supervision of the [commissioner] DEPARTMENT or local govern-
47 ment. Any such order of the [commissioner] DEPARTMENT or local govern-
48 ment shall be enforceable in an action brought by the attorney general
49 at the request and in the name of the [commissioner] DEPARTMENT or local
50 government in any court of competent jurisdiction. Any civil penalty or
51 order issued by the [commissioner] DEPARTMENT or local government pursu-
52 ant to this subdivision shall be reviewable in a proceeding pursuant to
53 article seventy-eight of the civil practice law and rules.

54 2. Criminal sanctions. Any person who violates any provision of arti-
55 cle twenty-four of this chapter, including any rule or regulation, local
56 law or ordinance, OR permit or order issued pursuant thereto, shall, in

1 addition, for the first offense, be guilty of a violation punishable by
2 a fine of not less than two thousand nor more than [four] FIVE thousand
3 dollars; for a second and each subsequent offense he OR SHE shall be
4 guilty of a misdemeanor punishable by a fine of not less than four thou-
5 sand nor more than [seven] TEN thousand dollars or a term of imprison-
6 ment of not less than fifteen days nor more than six months or both.
7 [Instead of] IN ADDITION TO these punishments, any offender may be
8 [punishable] PUNISHED by being ordered by the court to restore the
9 affected freshwater wetland AND ITS REGULATED ADJACENT AREA to its
10 condition prior to the offense, insofar as that is possible. The court
11 shall specify a reasonable time for the completion of such restoration,
12 which shall be effected under the supervision of the [commissioner]
13 DEPARTMENT or local government. Each offense shall be a separate and
14 distinct offense and, in the case of a continuing offense, each day's
15 continuance thereof shall be deemed a separate and distinct offense.

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

19 S 11. Paragraph 1 of subdivision (a) and subdivision (g) of section 83
20 of the state finance law, paragraph 1 of subdivision (a) as amended by
21 chapter 512 of the laws of 1994 and subdivision (g) as added by chapter
22 666 of the laws of 1989, are amended to read as follows:

23 1. The conservation fund shall consist of all moneys belonging to the
24 state received by the department of environmental conservation from the
25 sale of licenses for hunting, for trapping, and for fishing, all moneys
26 received in actions for penalties under articles eleven and thirteen of
27 the environmental conservation law and subdivision two of section
28 71-1929 of the environmental conservation law, or upon the settlement or
29 compromise thereof, all fines for violation of any of the provisions of
30 articles eleven and thirteen of the environmental conservation law, all
31 moneys arising out of the operation of real property under the jurisdic-
32 tion of the division of fish and wildlife in the department of environ-
33 mental conservation heretofore or hereafter acquired by the state of New
34 York, and from any concessions thereon and from any leases thereof,
35 including moneys received from the sale thereof when authorized by law,
36 all moneys received from leases or rentals of shellfish grounds in the
37 marine and coastal district, all moneys from gifts for fish and wildlife
38 management pursuant to section six hundred twenty-five of the tax law,
39 moneys received by the department of environmental conservation from the
40 sale of limited edition prints of fish and wildlife paintings, as
41 authorized by paragraph t of subdivision two of section 3-0301 of the
42 environmental conservation law, all moneys received from the reimburse-
43 ment provided for in paragraph b of subdivision seven of section 8-0109
44 of the environmental conservation law, ALL MONEYS RECEIVED BY THE
45 DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM PERMIT FEES PURSUANT TO
46 SUBDIVISION EIGHT OF SECTION 70-0117 OF THE ENVIRONMENTAL CONSERVATION
47 LAW, ALL MONEYS RECEIVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
48 FROM FINES AND PENALTIES PURSUANT TO SUBDIVISIONS ONE AND TWO OF SECTION
49 71-2303 OF THE ENVIRONMENTAL CONSERVATION LAW, and all other moneys
50 arising out of the application of any provisions of articles eleven and
51 thirteen of the environmental conservation law. These moneys, after
52 appropriation by the legislature, and within the amounts set forth and
53 for the several purposes specified, shall be available to the department
54 of environmental conservation for the care, management, protection and
55 enlargement of the fish, game and shell fish resources of the state and
56 for the promotion of public fishing and shooting. In the accomplishment

1 of these objects the moneys made available hereunder shall be devoted to
2 the purchase or acquisition of lands, lands under water, waters, or
3 rights therein as required, to payment for personal service, for mainte-
4 nance and operation, and for new construction and permanent betterments,
5 and to all other proper expenses of the department of environmental
6 conservation in the administration and enforcement of the provisions of
7 articles eleven and thirteen of the environmental conservation law.

8 (g) All moneys, fees, fines and penalties arising out of the adminis-
9 tration and enforcement of the tidal wetlands act (article twenty-five
10 of the environmental conservation law), EXCEPT PERMIT FEES RECEIVED BY
11 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO SUBDIVISION
12 EIGHT OF SECTION 70-0117 OF THE ENVIRONMENTAL CONSERVATION LAW, shall be
13 deposited into the marine resources account of the conservation fund.

14 S 12. This act shall take effect immediately.