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

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2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

Introduced by Sen. AVELLA -- 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, in relation to freshwater wetlands and repealing section 24-1305 of such law relating thereto

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

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

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

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

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

(c) protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies;

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

(e) pollution treatment by serving as biological and chemical oxidation basins;

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

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

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

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

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

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

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

S 2. The opening paragraph of subdivision 1 and subdivision 2 of section 24-0107 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, are amended to read as follows:

"Freshwater wetlands" means lands and waters of the state [as shown on the freshwater wetlands map which] THAT ARE ONE ACRE OR MORE IN SIZE OR, ADJACENT TO A WATER BODY, INCLUDING AN INTERMITTENT WATER BODY OR, IN THE DISCRETION OF THE COMMISSIONER, OF SIGNIFICANT LOCAL IMPORTANCE FOR ONE OR MORE OF THE SPECIFIC BENEFITS SET FORTH IN SUBDIVISION SEVEN OF SECTION 24-0105 OF THIS TITLE. FRESHWATER WETLANDS SHALL contain any or all of the following:

2. "Freshwater wetlands map" shall mean a map [promulgated] DEVELOPED by the department pursuant to section 24-0301 of this article on which are indicated the boundaries of any freshwater wetlands. THESE MAPS WILL SERVE THE PURPOSE OF EDUCATING THE PUBLIC ON THE LOCATION OF WETLANDS.

S 3. Subdivisions 1, 2, 3, 4, 5 and 6 of section 24-0301 of the environmental conservation law, subdivisions 1, 2 and 3 as amended by chapter 654 of the laws of 1977, and subdivisions 4, 5 and 6 as amended by chapter 16 of the laws of 2010, are amended to read as follows:

1. The commissioner shall, as soon as practicable, conduct a study to identify and map those individual freshwater wetlands in the state of New York [which shall have an area of at least twelve and four-tenths acres or more, or if less than twelve and four-tenths acres, (a) have, in the discretion of the commissioner, and subject to review of his action by the board created pursuant to title eleven of this article, unusual local importance for one or more of the specific benefits set forth in subdivision seven of section 24-0105] (A) AS DEFINED IN SECTION 24-0107 OF THIS ARTICLE or (b) THAT are located within the Adirondack park and meet the definition of wetlands contained in subdivision sixty-eight of section eight hundred two [of article twenty-seven] of the executive law, and shall determine their characteristics. This study shall, in addition to such other data as the commissioner may determine to be included, consist of the freshwater wetlands inventory of the department [of environmental conservation], currently being made, together with other available data on freshwater wetlands, whether assisted by the state of New York under the tidal wetlands act or otherwise, or assembled by federal or local governmental or private agencies, all of which information shall be assembled and integrated, as applicable, into a map of freshwater wetlands of the state of New York. Such study may, in the discretion of the commissioner, be carried out on a sectional or regional basis, as indicated by need, subject to overall completion in an expeditious fashion subject to the terms of this chapter. [This map, and any orders issued pursuant to the provisions of this article, shall comprise a part of the statewide environmental plan as provided for in section 3-0303 of this chapter.] As soon as practicable

the commissioner shall file with the secretary of state a detailed description of the technical methods and requirements to be utilized in compiling the inventory, and he shall afford the public an opportunity to submit comments thereon.

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

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

4. Upon completion of the [tentative] DRAFT freshwater wetlands map for a particular area, the commissioner or his designated hearing officer shall hold a public hearing in that area in order to afford an opportunity for any person to propose additions or deletions from such map. The commissioner shall give notice of such hearing to [each owner of record as shown on the latest completed tax assessment rolls, of lands designated as such wetlands as shown on said map and also to] the chief administrative officer and clerk of each local government within the boundaries of which any such wetland or a portion thereof is located and, in the case of a [tentative] DRAFT freshwater wetlands map for any area within the Adirondack park, to the Adirondack park agency, by certified mail not less than thirty days prior to the date set for such hearing and shall assure that a copy of the relevant map is available for public inspection at a convenient location in such local government. The map filed with a local government may, at the local government's request, be either a physical copy of the [tentative] DRAFT freshwater wetlands map, or, if available, a digital file that represents it. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least two newspapers having general circulation in the area where such wetlands are located. The commissioner may post on the department's website a digital image that represents the [tentative] DRAFT freshwater wetlands map.

5. [After considering the testimony given at such hearing and any other facts which may be deemed pertinent, after considering the rights of affected property owners and the ecological balance in accordance with the policy and purposes of this article, and, in the case of wetlands or portions thereof within the Adirondack park, after consulting with the Adirondack park agency, the commissioner shall promulgate by order the final freshwater wetlands map. Such order shall not be promulgated less than sixty days from the date of the hearing required by subdivision four of this section. A copy of the order, together with a copy of such map or relevant portion thereof shall be filed in the office of the clerk of each local government in which each such wetland or a portion thereof is located and, in the case of a map for any area

within the Adirondack park, with the Adirondack park agency. The map filed with a local government may, at the local government's request, be either a physical copy of the final freshwater wetlands map, or, if available, a digital file that represents it. The commissioner shall simultaneously give notice of such order to each owner of lands, as shown on the latest completed tax assessment rolls, designated as such wetlands by mailing a copy of such order to such owner by certified mail in any case where a notice by certified mail was not sent pursuant to subdivision four of this section, and in all other cases by first class mail. The commissioner shall also give notice of such order at such time to the chief administrative officer of each local government within the boundaries of which any such wetland or a portion thereof is located. At the time of filing with such clerk or clerks, the commissioner shall also cause a copy of such order to be published in at least two newspapers having general circulation in the area where such wetlands are located.] AFTER CONSIDERATION OF COMMENTS FROM THE PUBLIC THE COMMISSIONER MAY MAKE ALTERATIONS TO THE DRAFT MAP CONSISTENT WITH SECTION 24-0107 OF THIS ARTICLE. THE COMMISSIONER SHALL FINALIZE THE MAP AND FILE A COPY OF THE MAP WITH THE OFFICE OF THE CLERK OF EACH LOCAL GOVERNMENT WITH JURISDICTION OVER PART OR ALL OF THE REGION SHOWN ON THE MAP. The commissioner may post on the department's website a digital image that represents the final freshwater wetlands map.

6. Except as provided in subdivision eight of this section, the commissioner shall supervise the maintenance of such boundary maps, which shall be available to the public for inspection and examination at the regional office of the department in which the wetlands are wholly or partly located and in the office of the clerk of each county in which each such wetland or a portion thereof is located. The commissioner may readjust the map thereafter to clarify the boundaries of the wetlands, to correct any errors on the map, to effect any additions, deletions or technical changes on the map, and to reflect changes as have occurred as a result of the granting of permits pursuant to section 24-0703 of this article, or natural changes which may have occurred through erosion, accretion, or otherwise. Notice of such readjustment shall be given in the same manner as set forth in subdivision [five] FOUR of this section for the [promulgation] DEVELOPMENT of final freshwater wetlands maps. In addition, at the time notice is provided pursuant to subdivision [five] FOUR of this section, the commissioner shall update any digital image of the map posted on the department's website to reflect such readjustment.

S 4. Subdivisions 1, 2 and 4 of section 24-0701 of the environmental conservation law, subdivisions 1 and 2 as amended by chapter 654 of the laws of 1977 and subdivision 4 as amended by chapter 697 of the laws of 1979, are amended and a new subdivision 9 is added to read as follows:

1. [After issuance of the official freshwater wetlands map of the state, or of any selected section or region thereof, any] ANY person desiring to conduct on freshwater wetlands [as so designated thereon] any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title.

2. Activities subject to regulation UNDER SUBDIVISION ONE OF THIS SECTION shall include SUBDIVISION OF PARCELS OF LAND CONTAINING FRESHWATER WETLANDS AND any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other

obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland. Provided, that a greater distance from any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.

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

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

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

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

S 6. Subdivision 1 of section 24-0901 of the environmental conservation law, as added by chapter 614 of the laws of 1975, is amended to read as follows:

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

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

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

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

S 9. This act shall take effect on the ninetieth day after it shall have become a law.