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

7932

2013-2014 Regular Sessions

I N A S S E M B L Y

June 11, 2013

Introduced by M. of A. GABRYSZAK -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing a pilot program regarding regulation of freshwater wetlands that are delineated within sanitary sewer districts within district nine of the department of environmental conservation; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Article 24 of the environmental conservation law is amended by adding a new title 12 to read as follows:

TITLE 12

WETLANDS PROTECTION PILOT PROJECT

SECTION 24-1201. DECLARATION OF POLICY.
24-1202. DEFINITIONS.
24-1203. DEVELOPMENT ACTIVITIES IN CERTAIN WETLANDS.
24-1204. WETLANDS PERMITS.
24-1205. PILOT PROGRAM TASKFORCE.
24-1206. REPORTS.

S 24-1201. DECLARATION OF POLICY.

THE GENERAL WELFARE OF THE CITIZENS OF THE STATE IS BEST SERVED BY SUCCESSFULLY BALANCING ENVIRONMENTAL PROTECTION WITH SOCIAL, ECONOMIC, AND AGRICULTURAL ECONOMIC NEEDS OF THE STATE, AND WITH RESPECT TO WETLAND PROTECTION, THIS BALANCE IS BEST SERVED BY THE ESTABLISHMENT OF A POLICY THAT DEFINES WHERE AND HOW TO BEST APPLY ENVIRONMENTAL PROTECTIONS.

FURTHERMORE, THE LEGISLATURE RECOGNIZES THAT SIGNIFICANT PORTIONS OF THE LANDSCAPE OF REGION NINE OF THE DEPARTMENT ARE TYPICALLY MARKED BY POORLY DRAINED SOILS AND FLAT TOPOGRAPHY. ACCORDINGLY MUCH OF THE LAND MASS IS SUSCEPTIBLE TO SUBJECTIVE DELINEATION AS REGULATED WETLAND. SUCH

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

LBD11361-01-3

DELINEATION OF WHAT IS TYPICAL RATHER THAN WHAT IS RARE UNDULY DISRUPTS THE BALANCE OF ENVIRONMENTAL PROTECTION AND ECONOMIC NEED.

SIMILAR PUBLIC POLICY GUIDANCE EXISTS RELATIVE TO TAX POLICY INTENDED TO INCENTIVIZE OTHER LAND USE ACTIVITIES. THE LEGISLATURE RECOGNIZES THAT PUBLIC POLICY IS WELL ESTABLISHED TO INCENTIVIZE DESIRABLE OUTCOMES WITH RESPECT TO LAND USE ACTIVITIES, IN APPROPRIATE LOCATIONS OF THE STATE, AS DETERMINED BY LOCAL AUTHORITIES CONSISTENT WITH STATE LAW (E.G., AGRICULTURE AND DEVELOPMENT). TO FACILITATE VARIOUS LAND USES, PROVISIONS EXIST IN STATE LAW FOR THE CREATION OF SPECIAL TAX DISTRICTS, SUCH AS AGRICULTURAL DISTRICTS AND SANITARY SEWER DISTRICTS.

PUBLIC POLICY GOVERNING THE FORMATION OF THESE DISTRICTS IS WELL DESCRIBED. AGRICULTURAL DISTRICTS, WHERE AGRICULTURAL ACTIVITIES ARE PROMOTED, ARE NOT TO BE EXTENDED INTO SANITARY SEWER DISTRICTS WHERE LAND DEVELOPMENT ACTIVITIES ARE ANTICIPATED AND ENCOURAGED. CONVERSELY, SANITARY SEWER DISTRICTS ARE NOT BE EXTENDED INTO AGRICULTURAL DISTRICTS.

THERE IS GOOD REASON FOR THIS POLICY, AND ITS UNDERSTANDING IS IMPORTANT WITH RESPECT TO WETLAND PROTECTION POLICY.

THE LEGISLATURE RECOGNIZES THAT TO PROTECT THE FARM INDUSTRY AND ASSIST PROPERTY OWNERS IN THE PRESERVATION OF AGRICULTURAL ACTIVITIES, TAX RELIEF IS ACCORDED TO THOSE PROPERTY OWNERS WITHIN SPECIFIED DISTRICTS WHO AGREE TO KEEP THEIR PROPERTIES IN AGRICULTURE.

THE LEGISLATURE ALSO RECOGNIZES THE SIGNIFICANT PUBLIC INVESTMENT IN INFRASTRUCTURE THAT HAS BEEN MADE IN THE STATE TO PROTECT THE PUBLIC HEALTH AND THE QUALITY OF THE WATERS OF THE STATE, SPECIFICALLY WITH RESPECT TO THE DESIGN AND CONSTRUCTION OF SANITARY SEWERAGE COLLECTION AND TREATMENT SYSTEMS. THE LEGISLATURE ALSO RECOGNIZES THAT PUBLIC SAFETY IS WELL ESTABLISHED REGARDING SANITARY SEWERAGE SYSTEMS IN THAT:

1. SANITARY SEWERAGE SYSTEMS THROUGHOUT THE STATE HAVE BEEN, AND WILL BE, DESIGNED AND CONSTRUCTED IN ANTICIPATION OF EXISTING AND FUTURE DEVELOPMENT AS DICTATED BY THE LAND USE PATTERNS ORDAINED BY LOCAL MUNICIPALITIES CONSISTENT WITH STATE LAW.

2. THE LAW PROVIDES FOR THE FORMATION OF SANITARY SEWER DISTRICTS TO PROVIDE A MECHANISM FOR THE FAIR TAXATION OF PROPERTIES AND EXPECTED IMPROVED PROPERTIES WITHIN SANITARY SEWER DISTRICTS, IN ORDER THAT THE PUBLIC MAY BE REPAID FOR ITS INVESTMENT IN THE DESIGN AND CONSTRUCTION OF SUCH SANITARY SEWERAGE SYSTEMS, AND TO PROVIDE CONTINUING OPERATION AND MAINTENANCE OF SUCH SYSTEMS.

3. ACCORDINGLY, INTENSE DEVELOPMENT ACTIVITIES ARE INCENTIVIZED WITHIN THE SANITARY SEWER DISTRICTS OF THE STATE.

CONSISTENT WITH THIS CLEAR DIRECTION IN PUBLIC POLICY AND THE AFOREMENTIONED POLICY OF THE STATE THAT ENVIRONMENTAL LAWS BE CONSISTENT WITH THE GENERAL WELFARE AND BENEFICIAL ECONOMIC, SOCIAL AND AGRICULTURAL DEVELOPMENT OF THE STATE, LAND DEVELOPMENT IMPROVEMENTS THAT INCREASE THE ASSESSED VALUE OF PROPERTIES WITHIN THE SANITARY SEWER DISTRICTS OF REGION NINE OF THE DEPARTMENT AND THAT PROMOTE THE ECONOMIC WELFARE OF THE STATE, SHALL TAKE PRECEDENCE OVER FRESHWATER WETLAND PROTECTION, EXCEPT IN SUCH LOCATIONS WHERE WETLAND HABITATS ARE CLEARLY AND OBJECTIVELY IDENTIFIED AS THOSE LANDS COMMONLY UNDERSTOOD TO BE SWAMPS, MARSHES, BOGS, SLOUGHS, FENS, WITH SURFACE WATER ON SITE AT LEAST ONE HUNDRED EIGHTY DAYS IN A CALENDAR YEAR.

IN ORDER FOR WETLAND PROTECTION GOALS TO TAKE PRECEDENCE OVER LAND DEVELOPMENT ACTIVITIES AND THE CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS OF INDIVIDUALS WITHIN THE SANITARY SEWER DISTRICTS OF REGION NINE OF THE DEPARTMENT, THE WETLAND HABITAT MUST BE UNIVERSALLY IDENTIFIABLE BY REASONABLE, ECONOMICAL AND COMMONLY AVAILABLE METHODS SUCH AS AERIAL

PHOTOGRAPHY. TYPICALLY THESE AREAS HAVE ALREADY BEEN IDENTIFIED AND PROMULGATED AS REGULATED WETLANDS. IN MANY INSTANCES, ADDITIONAL PROTECTIONS HAVE BEEN AFFORDED TO THESE HABITATS AS PROPERTIES SO ENCUMBERED WERE REMOVED FROM THE SERVICE AREAS OF THE SANITARY SEWER SYSTEMS. ACCORDINGLY, NO SANITARY SEWER CAPACITY WAS DESIGNATED FOR THE DEVELOPMENT OF PROPERTIES CONSTRAINED WITH WETLANDS AND FLOODPLAINS WITHIN SANITARY SEWER DISTRICTS.

FURTHERMORE, THE LEGISLATURE RECOGNIZES THAT REGULATIONS GOVERNING CONSTRUCTION AND DEVELOPMENT ACTIVITIES MANDATE THAT TWO PRIMARY BENEFITS OF WETLANDS BE PROVIDED BY THE PROJECT DESIGN. THE STATE ALREADY HAS REQUIRED THAT DEVELOPMENTS PROVIDE FOR THE STORAGE OF STORM WATER RUNOFF, AND THAT WATER QUALITY/GROUND WATER RECHARGE FEATURES BE INCLUDED IN THE DESIGN OF ANY CONSTRUCTION SITE GREATER THAN ONE ACRE IN SIZE. ACCORDINGLY, TO ENABLE A WETLAND HABITAT TO DISPLACE A LAND USE ACTIVITY WITHIN A SANITARY SEWER DISTRICT IN REGION NINE OF THE DEPARTMENT, THE HABITAT MUST NOT BE TYPICAL OF THE LOCAL OR REGIONAL LANDSCAPE; IT MUST BE A HIGHLY PRODUCTIVE AND DIVERSE ECOSYSTEM; AND PHYSICALLY IT MUST CLEARLY AND OBJECTIVELY BE IDENTIFIABLE AS A LAND THAT IS COMMONLY UNDERSTOOD TO BE SWAMP, MARSH, BOG, SLOUGH, FEN, ETC., AS PREVIOUSLY DIRECTED BY THE LEGISLATURE AND PROSCRIBED IN STATE LAW. TO PROPERLY ACHIEVE THESE ENDS THE LEGISLATURE HEREBY CREATES THIS PILOT PROGRAM IN DISTRICT NINE OF THE STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

S 24-1202. DEFINITIONS.

FOR PURPOSES OF THIS TITLE, "SANITARY SEWER DISTRICT" SHALL MEAN A SANITARY SEWER DISTRICT CREATED BY A COUNTY PURSUANT TO ARTICLE FIVE-A OF THE COUNTY LAW; BY A TOWN PURSUANT TO ARTICLE TWELVE OR ARTICLE TWELVE-A OF THE TOWN LAW; OR A SANITARY SEWER SYSTEM CREATED BY A VILLAGE PURSUANT TO ARTICLE FOURTEEN OF THE VILLAGE LAW.

S 24-1203. DEVELOPMENT ACTIVITIES IN CERTAIN WETLANDS.

ON ANY LAND WITHIN THE JURISDICTION OF REGION NINE OF THE DEPARTMENT THAT IS IN A DULY ESTABLISHED SANITARY SEWER DISTRICT, DEVELOPMENT ACTIVITIES SHALL BE ALLOWED AND SHALL TAKE PRECEDENCE OVER FRESHWATER WETLANDS REGULATIONS, EXCEPT IN SUCH LOCATIONS WHERE WETLANDS HABITATS ARE CLEARLY AND OBJECTIVELY IDENTIFIED AS THOSE LANDS COMMONLY UNDERSTOOD TO BE SWAMPS, MARSHES, SLOUGHS, BOGS, AND FLATS SUPPORTING AQUATIC OR SEMI-AQUATIC VEGETATION WITH A WATER DURATION OF AT LEAST ONE HUNDRED EIGHTY DAYS IN A CALENDAR YEAR. THE DEPARTMENT MUST PROVE THAT A PARCEL QUALIFIES AS A SWAMP, MARSH, SLOUGH, BOG OR FLAT SUPPORTING AQUATIC OR SEMI-AQUATIC VEGETATION THROUGH GENERALLY ACCEPTED METHODS SUCH AS AERIAL PHOTOGRAPHY OR OTHER GENERALLY ACCEPTED METHODS FOR IDENTIFYING WETLANDS.

S 24-1204. WETLANDS PERMITS.

ANY WETLANDS PERMIT ISSUED BY THE DEPARTMENT IN THE PILOT STUDY AREA DURING THE COURSE OF THIS PILOT PROJECT SHALL BE VALID FOR ALL PURPOSES NOTWITHSTANDING ANY CHANGES IN LAW, REGULATION OR POLICY THAT RESULT FROM THE PILOT STUDY. ANY PERMIT APPLIED FOR DURING THE PENDENCY OF THE PILOT PROGRAM SHALL BE EVALUATED UNDER THE REGULATIONS APPLICABLE DURING THE PENDENCY OF THE PILOT PROGRAM.

S 24-1205. PILOT PROGRAM TASKFORCE.

THERE IS HEREBY CREATED A LEGISLATIVE TASKFORCE TO MONITOR THE RESULTS OF THIS PILOT PROGRAM. THE TASK FORCE SHALL BE MADE UP OF THE CHAIR OF THE SENATE ENVIRONMENTAL CONSERVATION COMMITTEE, THE RANKING MINORITY MEMBER OF THE SENATE ENVIRONMENTAL CONSERVATION COMMITTEE, THE CHAIR OF THE SENATE ECONOMIC DEVELOPMENT COMMITTEE, THE RANKING MINORITY MEMBER OF THE SENATE ECONOMIC DEVELOPMENT COMMITTEE, THE CHAIR OF THE ASSEMBLY

ENVIRONMENTAL CONSERVATION COMMITTEE, THE RANKING MINORITY MEMBER OF THE ASSEMBLY ENVIRONMENTAL CONSERVATION COMMITTEE, THE CHAIR OF THE ASSEMBLY ECONOMIC DEVELOPMENT COMMITTEE AND THE RANKING MINORITY MEMBER OF THE ASSEMBLY ECONOMIC DEVELOPMENT COMMITTEE.

S 24-1206. REPORTS.

THE DEPARTMENT SHALL MONITOR THE IMPACT OF THE DEVELOPMENT AUTHORIZED BY SECTION 24-1203 OF THIS TITLE ON THOSE WETLANDS AS DEFINED IN SUCH SECTION THAT EXIST WITHIN THE BORDERS OF SANITARY SEWER DISTRICTS IN DISTRICT NINE. THE DEPARTMENT SHALL FILE AN ANNUAL REPORT OUTLINING ITS FINDINGS ON JUNE FIRST OF EACH YEAR WITH THE GOVERNOR AND WITH THE LEGISLATIVE TASK FORCE ESTABLISHED HEREIN. THE REPORT SHALL INCLUDE THE FOLLOWING FOR EACH SITE DEVELOPED DURING THE PILOT PROJECT:

1. SPECIFIC BENCHMARK MEASUREMENTS FOR EACH WETLAND AS DEFINED IN SECTION 24-1203 OF THIS TITLE.

2. ANNUAL MEASURES OF THE IMPACT OF DEVELOPMENT ON THE CHANGES IN SPECIES AND/OR HABITAT IN THE WETLANDS AREAS SO IDENTIFIED AND A DETERMINATION WHETHER THE HARM IS SUBSTANTIAL TOGETHER WITH IDENTIFICATION OF THE CRITERIA USED TO MEASURE THE HARM.

3. WHETHER, WITH RESPECT TO EACH DEVELOPMENT STUDIED, THE POLICY IMPLEMENTED IN THE PILOT PROGRAM HAS ENCOURAGED DEVELOPMENT IN AREAS IN EXISTING SANITARY SEWER DISTRICTS THEREBY DISCOURAGING THE PROLIFERATION OF INFRASTRUCTURE AND/OR THE CONSEQUENT DISRUPTION OF OTHER WETLANDS OUTSIDE EXISTING SANITARY SEWER DISTRICTS.

4. A COST/BENEFIT ANALYSIS SHOWING THE SAVINGS AND/OR COSTS TO MUNICIPALITIES OF THE ABILITY TO USE SANITARY SEWER SYSTEMS THAT HAVE BEEN INSTALLED BUT THE USE OF WHICH MIGHT BE LOST BECAUSE THE SANITARY SEWER SYSTEM IS IN AN AREA WHERE A WETLAND DETERMINATION WOULD PREVENT DEVELOPMENT BUT FOR THE EXISTENCE OF THIS PILOT PROGRAM.

S 2. This act shall take effect immediately and shall expire and be deemed repealed on December 31, 2016.