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I N S E N A T E

May 11, 2016

Introduced by Sen. LATIMER -- 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:

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

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

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

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

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

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

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

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

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

24 S 3. Subdivisions 1, 2, 3, 4, 5 and 6 of section 24-0301 of the envi-
25 ronmental conservation law, subdivision 1 as amended by section 37 of
26 part D of chapter 60 of the laws of 2012, subdivisions 2 and 3 as
27 amended by chapter 654 of the laws of 1977 and subdivisions 4, 5 and 6
28 as amended by chapter 16 of the laws of 2010, are amended to read as
29 follows:

30 1. The commissioner shall, as soon as practicable, conduct a study to
31 identify and map those individual freshwater wetlands in the state of
32 New York [which shall have an area of at least twelve and four-tenths
33 acres or more, or if less than twelve and four-tenths acres, (a) have,
34 in the discretion of the commissioner unusual local importance for one
35 or more of the specific benefits set forth in subdivision seven of
36 section 24-0105 of this article] AS DEFINED IN SECTION 24-0107 OF THIS
37 ARTICLE or (b) THAT are located within the Adirondack park and meet the
38 definition of wetlands contained in subdivision sixty-eight of section
39 eight hundred two of the executive law, and shall determine their char-
40 acteristics. This study shall, in addition to such other data as the
41 commissioner may determine to be included, consist of the freshwater
42 wetlands inventory of the department [of environmental conservation],
43 currently being made, together with other available data on freshwater
44 wetlands, whether assisted by the state of New York under the tidal
45 wetlands act or otherwise, or assembled by federal or local governmental
46 or private agencies, all of which information shall be assembled and
47 integrated, as applicable, into a map of freshwater wetlands of the
48 state of New York. Such study may, in the discretion of the commission-
49 er, be carried out on a sectional or regional basis, as indicated by
50 need, subject to overall completion in an expeditious fashion subject to
51 the terms of this chapter. [This map, and any orders issued pursuant to
52 the provisions of this article, shall comprise a part of the statewide
53 environmental plan as provided for in section 3-0303 of this chapter.]
54 As soon as practicable the commissioner shall file with the secretary of
55 state a detailed description of the technical methods and requirements

1 to be utilized in compiling the inventory, and he shall afford the
2 public an opportunity to submit comments thereon.

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

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

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

43 5. [After considering the testimony given at such hearing and any
44 other facts which may be deemed pertinent, after considering the rights
45 of affected property owners and the ecological balance in accordance
46 with the policy and purposes of this article, and, in the case of
47 wetlands or portions thereof within the Adirondack park, after consult-
48 ing with the Adirondack park agency, the commissioner shall promulgate
49 by order the final freshwater wetlands map. Such order shall not be
50 promulgated less than sixty days from the date of the hearing required
51 by subdivision four of this section. A copy of the order, together with
52 a copy of such map or relevant portion thereof shall be filed in the
53 office of the clerk of each local government in which each such wetland
54 or a portion thereof is located and, in the case of a map for any area
55 within the Adirondack park, with the Adirondack park agency.] AFTER
56 CONSIDERATION OF COMMENTS FROM THE PUBLIC THE COMMISSIONER MAY MAKE

1 ALTERATIONS TO THE DRAFT MAP CONSISTENT WITH SECTION 24-0107 OF THIS
2 ARTICLE. THE COMMISSIONER SHALL FINALIZE THE MAP AND FILE A COPY OF THE
3 MAP WITH THE OFFICE OF THE CLERK OF EACH LOCAL GOVERNMENT WITH JURISDIC-
4 TION OVER PART OR ALL OF THE REGION SHOWN ON THE MAP. The map filed with
5 a local government may, at the local government's request, be either a
6 physical copy of the final freshwater wetlands map, or, if available, a
7 digital file that represents it. [The commissioner shall simultaneously
8 give notice of such order to each owner of lands, as shown on the latest
9 completed tax assessment rolls, designated as such wetlands by mailing a
10 copy of such order to such owner by certified mail in any case where a
11 notice by certified mail was not sent pursuant to subdivision four of
12 this section, and in all other cases by first class mail. The commis-
13 sioner shall also give notice of such order at such time to the chief
14 administrative officer of each local government within the boundaries of
15 which any such wetland or a portion thereof is located. At the time of
16 filing with such clerk or clerks, the commissioner shall also cause a
17 copy of such order to be published in at least two newspapers having
18 general circulation in the area where such wetlands are located.] The
19 commissioner may post on the department's website a digital image that
20 represents the final freshwater wetlands map.

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

39 S 4. Subdivisions 1, 2 and 4 of section 24-0701 of the environmental
40 conservation law, subdivisions 1 and 2 as amended by chapter 654 of the
41 laws of 1977 and subdivision 4 as amended by chapter 697 of the laws of
42 1979, are amended and a new subdivision 9 is added to read as follows:

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

48 2. Activities subject to regulation UNDER SUBDIVISION ONE OF THIS
49 SECTION shall include SUBDIVISION OF PARCELS OF LAND CONTAINING FRESHWA-
50 TER WETLANDS AND any form of draining, dredging, excavation, removal of
51 soil, mud, sand, shells, gravel or other aggregate from any freshwater
52 wetland, either directly or indirectly; and any form of dumping, fill-
53 ing, or depositing of any soil, stones, sand, gravel, mud, rubbish or
54 fill of any kind, either directly or indirectly; erecting any struc-
55 tures, roads, the driving of pilings, or placing of any other
56 obstructions whether or not changing the ebb and flow of the water; any

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

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

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

32 S 5. Subdivision 5 of section 24-0703 of the environmental conserva-
33 tion law, as amended by section 38 of part D of chapter 60 of the laws
34 of 2012, is amended to read as follows:

35 5. [Prior to the promulgation of the final freshwater wetlands map in
36 a particular area and the implementation of a freshwater wetlands
37 protection law or ordinance, no person shall conduct, or cause to be
38 conducted, any activity for which a permit is required under section
39 24-0701 of this title on any freshwater wetland unless he has obtained a
40 permit from the commissioner under this section.] Any person may inquire
41 of the department as to whether or not a given parcel of land [will be
42 designated] INCLUDES a freshwater wetland subject to regulation. The
43 department shall give a definite answer in writing within thirty days of
44 such request as to [whether] THE STATUS OF such parcel [will or will not
45 be so designated]. Provided that, in the event that weather or ground
46 conditions prevent the department from making a determination within
47 thirty days, it may extend such period until a determination can be
48 made. Such answer in the affirmative shall be reviewable; such an answer
49 in the negative shall be a complete defense to the enforcement of this
50 article as to such parcel of land. [The commissioner may by regulation
51 adopted after public hearing exempt categories or classes of wetlands or
52 individual wetlands which he determines not to be critical to the furth-
53 erance of the policies and purposes of this article.]

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

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

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

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

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

22 S 9. This act shall take effect immediately.