

# STATE OF NEW YORK

3658

2019-2020 Regular Sessions

## IN ASSEMBLY

January 30, 2019

Introduced by M. of A. ENGLEBRIGHT, THIELE, MOSLEY, GALEF, ORTIZ,  
L. ROSENTHAL, WALKER, GOTTFRIED, ABINANTI, DE LA ROSA, WILLIAMS,  
JAFFEE, GLICK -- Multi-Sponsored by -- M. of A. BUCHWALD, RAMOS --  
read once and referred 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 Assem-  
bly, 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 § 2. The opening paragraph of subdivision 1 and subdivision 2 of  
14 section 24-0107 of the environmental conservation law, as amended by  
15 chapter 654 of the laws of 1977, are amended to read as follows:

16 "Freshwater wetlands" means lands and waters of the state [~~as shown on~~  
17 ~~the freshwater wetlands map which~~] that are one acre or more in size or,  
18 adjacent to a water body, including an intermittent water body or, in  
19 the discretion of the commissioner, of significant local importance for  
20 one or more of the specific benefits set forth in subdivision seven of  
21 section 24-0105 of this title. Freshwater wetlands shall contain any or  
22 all of the following:

23 2. "Freshwater wetlands map" shall mean a map [~~promulgated~~] developed  
24 by the department pursuant to section 24-0301 of this article on which  
25 are indicated the boundaries of any freshwater wetlands. These maps will  
26 serve the purpose of educating the public on the location of wetlands.

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

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

1 As soon as practicable the commissioner shall file with the secretary of  
2 state a detailed description of the technical methods and requirements  
3 to be utilized in compiling the inventory, and he shall afford the  
4 public an opportunity to submit comments thereon.

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

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

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

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

1 ~~within the Adirondack park, with the Adirondack park agency.] After~~  
2 consideration of comments from the public the commissioner may make  
3 alterations to the draft map consistent with section 24-0107 of this  
4 article. The commissioner shall finalize the map and file a copy of the  
5 map with the office of the clerk of each local government with jurisdic-  
6 tion over part or all of the region shown on the map. The map filed with  
7 a local government may, at the local government's request, be either a  
8 physical copy of the final freshwater wetlands map, or, if available, a  
9 digital file that represents it. [~~The commissioner shall simultaneously~~  
10 ~~give notice of such order to each owner of lands, as shown on the latest~~  
11 ~~completed tax assessment rolls, designated as such wetlands by mailing a~~  
12 ~~copy of such order to such owner by certified mail in any case where a~~  
13 ~~notice by certified mail was not sent pursuant to subdivision four of~~  
14 ~~this section, and in all other cases by first class mail. The commis-~~  
15 ~~sioner shall also give notice of such order at such time to the chief~~  
16 ~~administrative officer of each local government within the boundaries of~~  
17 ~~which any such wetland or a portion thereof is located. At the time of~~  
18 ~~filing with such clerk or clerks, the commissioner shall also cause a~~  
19 ~~copy of such order to be published in at least two newspapers having~~  
20 ~~general circulation in the area where such wetlands are located.] The  
21 commissioner may post on the department's website a digital image that  
22 represents the final freshwater wetlands map.~~

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

41 § 4. Subdivisions 1, 2 and 4 of section 24-0701 of the environmental  
42 conservation law, subdivisions 1 and 2 as amended by chapter 654 of the  
43 laws of 1977 and subdivision 4 as amended by chapter 697 of the laws of  
44 1979, are amended and a new subdivision 9 is added to read as follows:

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

50 2. Activities subject to regulation under subdivision one of this  
51 section shall include subdivision of parcels of land containing freshwa-  
52 ter wetlands and any form of draining, dredging, excavation, removal of  
53 soil, mud, sand, shells, gravel or other aggregate from any freshwater  
54 wetland, either directly or indirectly; and any form of dumping, fill-  
55 ing, or depositing of any soil, stones, sand, gravel, mud, rubbish or  
56 fill of any kind, either directly or indirectly; erecting any struc-

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

16 4. ~~[The]~~ On lands in active agricultural use, the activities of farm-  
17 ers and other landowners in grazing and watering livestock, making  
18 reasonable use of water resources, harvesting natural products of the  
19 wetlands, selectively cutting timber, draining land or wetlands for  
20 growing agricultural products and otherwise engaging in the use of  
21 wetlands or other land for growing agricultural products shall be  
22 excluded from regulated activities and shall not require a permit under  
23 subdivision one ~~[hereof]~~ of this section, except that structures not  
24 required for enhancement or maintenance of the agricultural productivity  
25 of the land and any filling activities shall not be excluded hereunder,  
26 and provided that the use of land ~~[designated as a freshwater wetland~~  
27 ~~upon the freshwater wetlands map at the effective date thereof]~~ that  
28 meets the definition of a freshwater wetland in section 24-0107 of this  
29 article for uses other than those referred to in this subdivision shall  
30 be subject to the provisions of this article.

31 9. Any permit obtained subject to subdivision one of this section  
32 shall be permanently appended to the deed for the real property such  
33 regulated action occurred on.

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

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

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

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

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

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

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

25 § 9. This act shall take effect immediately.