

STATE OF NEW YORK

5116

2021-2022 Regular Sessions

IN SENATE

February 24, 2021

Introduced by Sen. HARCKHAM -- 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 to repeal certain provisions 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. Subdivisions 2, 3 and 7 of section 24-0105 of the environ-
2 mental conservation law, as added by chapter 614 of the laws of 1975,
3 subdivision 7 as renumbered by chapter 654 of the laws of 1977, are
4 amended to read as follows:

5 2. Considerable acreage of freshwater wetlands in the state of New
6 York has been lost, despoiled or impaired by unregulated draining,
7 dredging, filling, excavating, building, pollution or other [~~acts~~]
8 activities inconsistent with the natural uses of such areas. [~~Other~~
9 ~~freshwater~~] Freshwater wetlands are in jeopardy of being lost, despoiled
10 or impaired by such [~~unrelated-acts~~] activities and because of the
11 recent curtailment of federal wetland protections.

12 3. Recurrent flooding aggravated or caused by the loss of freshwater
13 wetlands has serious effects upon natural ecosystems. The increasing
14 severity and duration of storm-related flooding due to climate change,
15 which has caused billions of dollars of property damage in the state,
16 makes protection of all freshwater wetlands in the state of vital impor-
17 tance.

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

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

23 (b) wildlife habitat by providing breeding, nesting and feeding
24 grounds and cover for many forms of wildlife, wildfowl and shorebirds,

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

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1 including migratory wildfowl and rare, endangered or threatened species
2 [~~such as the bald eagle and osprey~~];

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

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

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

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

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

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

18 (i) sources of nutrients in freshwater food cycles and nursery grounds
19 and sanctuaries for freshwater fish[~~-~~];

20 (j) preservation of plant species that are rare, endangered or threat-
21 ened, or exploitably vulnerable as defined in section 9-1503 of this
22 chapter; and

23 (k) preservation of communities of plants and animals that are deemed
24 by the commissioner to be rare in the state or in a region of the state.

25 § 2. The opening paragraph of subdivision 1, paragraphs (c) and (d) of
26 subdivision 1, and subdivisions 2, 3 and 8 of section 24-0107 of the
27 environmental conservation law, as amended by chapter 654 of the laws of
28 1977, are amended, and a new subdivision 9 is added to read as follows:

29 "Freshwater wetlands" means lands and waters of the state [~~as shown on~~
30 ~~the freshwater wetlands map~~] that have an area of at least twelve and
31 four-tenths acres or, if less than twelve and four-tenths acres in size,
32 are of unusual importance and which contain any or all of the following:

33 (c) lands and waters substantially enclosed by aquatic or semi-aquatic
34 vegetation as set forth in paragraph (a) of this subdivision or by dead
35 vegetation as set forth in paragraph (b) of this subdivision, the regu-
36 lation of which is necessary to protect and preserve the aquatic and
37 semi-aquatic vegetation; and

38 (d) the waters overlying the areas set forth in paragraphs (a) and (b)
39 of this subdivision and the lands underlying paragraph (c) of this
40 subdivision.

41 2. "Freshwater wetlands map" shall mean a map promulgated by the
42 department pursuant to section 24-0301 of this article on which are
43 indicated the boundaries of any freshwater wetlands. Freshwater wetland
44 maps will serve the purpose of educating the public on the approximate
45 location of wetlands, are for educational purposes only, and are not
46 controlling for purposes of determining if a wetlands permit is required
47 pursuant to section 24-0701 of this article.

48 3. "Boundaries of a freshwater wetland" shall mean the outer limit of
49 the vegetation specified in paragraphs (a) and (b) of subdivision one of
50 this section [~~24-0107~~] and of the lands and waters specified in para-
51 graph (c) of such subdivision.

52 8. "Pollution" shall mean the presence in the environment of [~~man-in-~~
53 ~~duced~~] human-induced conditions or contaminants in quantities or charac-
54 teristics which are or may be injurious to human, plant or wildlife, or
55 other animal life or to property.

1 9. "Unusual importance" shall mean a freshwater wetland, regardless of
2 size, that possesses one or more of the following characteristics as
3 determined by the department:

4 (a) it is located in a watershed that has experienced significant
5 flooding in the past or is expected to experience significant flooding
6 in the future from severe storm events related to climate change;

7 (b) it is located within an urbanized area, as defined by the United
8 States census bureau;

9 (c) it contains a plant species occurring in fewer than thirty-five
10 sites statewide or having fewer than five thousand individuals state-
11 wide;

12 (d) it contains habitat for an essential behavior of an endangered or
13 threatened species or a species of special concern as defined under
14 section 11-0535 of this chapter and/or listed as a species of greatest
15 conservation need in New York's wildlife action plan;

16 (e) it is classified by the department as a Class I wetland;

17 (f) it is classified by the department as a Class II wetland and the
18 department determines based on criteria established by regulation that
19 its wetland functions and values are of local or regional significance;
20 or

21 (g) it is determined by the commissioner to be of significant impor-
22 tance to protecting the state's water quality.

23 § 3. Subdivisions 1, 2, 3, 4 and 5 of section 24-0301 of the environ-
24 mental conservation law are REPEALED.

25 § 4. Subdivisions 6, 7 and 8 of section 24-0301 of the environmental
26 conservation law, subdivision 6 as amended by chapter 16 of the laws of
27 2010 and subdivision 7 as amended and subdivision 8 as added by chapter
28 654 of the laws of 1977, are amended to read as follows:

29 ~~[6.]~~ 1. Except as provided in subdivision ~~[eight]~~ three of this
30 section, the commissioner shall supervise the maintenance of ~~[such bound-~~
31 ~~ary]~~ freshwater wetlands maps, which shall be available to the public
32 ~~[for inspection and examination at the regional office of the department~~
33 ~~in which the wetlands are wholly or partly located and in the office of~~
34 ~~the clerk of each county in which each such wetland or a portion thereof~~
35 ~~is located]~~ on the department's website. The commissioner may readjust
36 the map ~~[thereafter to clarify the boundaries of the wetlands, to~~
37 ~~correct any errors on the map, to effect any additions, deletions or~~
38 ~~technical changes on the map, and to reflect changes as have occurred as~~
39 ~~a result of the granting of permits pursuant to section 24-0703 of this~~
40 ~~article, or natural changes which may have occurred through erosion,~~
41 ~~accretion, or otherwise. Notice of such readjustment shall be given in~~
42 ~~the same manner as set forth in subdivision five of this section for the~~
43 ~~promulgation of final freshwater wetlands maps. In addition, at the time~~
44 ~~notice is provided pursuant to subdivision five of this section, the~~
45 ~~commissioner shall update any digital image of the map posted on the~~
46 ~~department's website to reflect such readjustment]~~ at any time to more
47 accurately depict the approximate location of wetlands.

48 ~~[7.]~~ 2. Except as provided in subdivision ~~[eight]~~ three of this
49 section, the commissioner may, upon his own initiative, and shall, upon
50 a written request by a landowner whose land or a portion thereof may be
51 included within a wetland, or upon the written request of another person
52 or persons or an official body whose interests are shown to be affected,
53 cause to be delineated ~~[more precisely]~~ the boundary line or lines of a
54 freshwater wetland or a portion thereof and the regulated freshwater
55 wetland adjacent area as set forth in subdivision two of section 24-0701
56 of this article. ~~[Such more precise delineation of a freshwater wetland~~

~~boundary line or lines shall be of appropriate scale and sufficient clarity to permit the ready identification of individual buildings and of other major man-made structures or facilities or significant geographical features with respect to the boundary of any freshwater wetland.~~ The commissioner shall undertake to delineate the boundary of a particular wetland or wetlands, or a particular part of the boundary or regulated adjacent area thereof only upon a showing by the applicant therefor of good cause for such ~~[more precise]~~ delineation and the establishment of such ~~[more precise]~~ line.

~~[8-]~~ 3. The supervision of the maintenance of any freshwater wetlands map or portion thereof applicable to wetlands within the Adirondack park, the readjustment and precise delineation of wetland boundary lines and the other functions and duties ascribed to the commissioner by subdivisions ~~[six and seven]~~ one and two of this section shall be performed by the Adirondack park agency, which shall make such maps available ~~[for public inspection and examination at its headquarters]~~ on the agency's website.

§ 5. Subdivisions 1 and 4 of section 24-0701 of the environmental conservation law, subdivision 1 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 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]~~ or on the regulated freshwater wetland adjacent area as set forth in subdivision two of this section any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title.

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.

§ 6. Subdivision 5 of section 24-0703 of the environmental conservation law, as amended by section 38 of part D of chapter 60 of the laws of 2012, 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 title 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 or a regulated freshwater wetland adjacent area and whether a permit under subdivision one of this section is required for a proposed activity. The

1 department shall give a definite answer in writing within [~~thirty~~] sixty
2 days of such request as to [~~whether~~] the status of such parcel [~~will or~~
3 ~~will not be so designated~~] and whether a permit is required for the
4 proposed activity. Provided that, in the event that weather or ground
5 conditions prevent the department from making a determination within
6 [~~thirty~~] sixty days, it may extend such period until a determination can
7 be made. Such answer in the affirmative shall be reviewable; such an
8 answer in the negative shall be a complete defense to the enforcement of
9 this article as to such parcel of land for a period of five years from
10 the date the department issues the negative answer. [~~The commissioner~~
11 ~~may by regulation adopted after public hearing exempt categories or~~
12 ~~classes of wetlands or individual wetlands which he determines not to be~~
13 ~~critical to the furtherance of the policies and purposes of this arti-~~
14 ~~cle.~~]

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

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

22 § 8. Subdivisions 1 and 5 of section 24-0903 of the environmental
23 conservation law, as added by chapter 614 of the laws of 1975, are
24 amended to read as follows:

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

36 5. Prior to the adoption of any land use regulations governing fresh-
37 water wetlands, the commissioner shall hold a public hearing thereon in
38 the area in which the affected freshwater wetlands are located, and give
39 fifteen days prior notice thereof by posting on the department's website
40 or by publication at least once in a newspaper having general circula-
41 tion in the area of the local government involved. The commissioner
42 shall promulgate the regulations within thirty days of such hearing and
43 post such order on the department's website or publish such order [~~at~~
44 ~~least once~~] in a newspaper having general circulation in the area of the
45 local government affected and make such plan available for public
46 inspection and review; such order shall not take effect until thirty
47 days after the filing thereof with the clerk of the county in which such
48 wetland is located.

49 § 9. Paragraph (c) of subdivision 8 of section 70-0117 of the environ-
50 mental conservation law, as added by section 1 of part AAA of chapter 59
51 of the laws of 2009, is amended to read as follows:

52 (c) [~~All fees~~] Fees collected pursuant to [~~this~~] paragraph (a) of this
53 subdivision shall be deposited into the environmental protection fund
54 pursuant to section ninety-two-s of the state finance law. Fees
55 collected pursuant to paragraph (b) of this subdivision shall be depos-

1 ited to the credit of the marine resources account of the conservation
2 fund.

3 (d) Application fees required pursuant to this subdivision will not be
4 required for any state department.

5 § 10. Subdivisions 1 and 2 of section 71-2303 of the environmental
6 conservation law, as amended by chapter 99 of the laws of 2010, are
7 amended to read as follows:

8 1. Administrative sanctions. a. Any person who violates, disobeys or
9 disregards any provision of article twenty-four, including title five
10 and section 24-0507 thereof or any rule or regulation, local law or
11 ordinance, permit or order issued pursuant thereto, shall be liable to
12 the people of the state for a civil penalty of not to exceed [~~eleven~~
13 ten] thousand dollars for every such violation, to be assessed, after a
14 hearing or opportunity to be heard upon due notice and with the rights
15 to specification of the charges and representation by counsel at such
16 hearing, by the commissioner or local government. Such penalty may be
17 recovered in an action brought by the attorney general at the request
18 and in the name of the commissioner or local government in any court of
19 competent jurisdiction. Such civil penalty may be released or compro-
20 mised by the commissioner or local government before the matter has been
21 referred to the attorney general; and where such matter has been
22 referred to the attorney general, any such penalty may be released or
23 compromised and any action commenced to recover the same may be settled
24 and discontinued by the attorney general with the consent of the commis-
25 sioner or local government. In addition, the commissioner or local
26 government shall have power, following a hearing held in conformance
27 with the procedures set forth in section 71-1709 of this article, to
28 direct the violator to cease [~~his violation of~~ violating] the act and to
29 restore the affected freshwater wetland to its condition prior to the
30 violation, insofar as that is possible within a reasonable time and
31 under the supervision of the commissioner or local government. Any such
32 order of the commissioner or local government shall be enforceable in an
33 action brought by the attorney general at the request and in the name of
34 the commissioner or local government in any court of competent jurisdic-
35 tion. Any civil penalty or order issued by the commissioner or local
36 government pursuant to this subdivision shall be reviewable in a
37 proceeding pursuant to article seventy-eight of the civil practice law
38 and rules.

39 b. Upon determining that significant damage to the functions and bene-
40 fits of a freshwater wetland is occurring or is imminent as a result of
41 any violation of article twenty-four of this chapter, including but not
42 limited to (i) activity taking place requiring a permit under article
43 twenty-four of this chapter but for which no permit has been granted or
44 (ii) failure on the part of a permittee to adhere to permit conditions,
45 the commissioner or local government shall have power to direct the
46 violator to cease and desist from violating the act. In such cases the
47 violator shall be provided an opportunity to be heard with ten days of
48 receipt of the notice to cease and desist.

49 2. Criminal sanctions. Any person who violates any provision of arti-
50 cle twenty-four of this chapter, including any rule or regulation, local
51 law or ordinance, permit or order issued pursuant thereto, shall, in
52 addition, for the first offense, be guilty of a violation punishable by
53 a fine of not less than two thousand nor more than [~~four~~ five] thousand
54 dollars; for a second and each subsequent offense he shall be guilty of
55 a misdemeanor punishable by a fine of not less than four thousand nor
56 more than [~~seven~~ ten] thousand dollars or a term of imprisonment of not

1 less than fifteen days nor more than six months or both. Instead of
2 these punishments, any offender may be punishable by being ordered by
3 the court to restore the affected freshwater wetland to its condition
4 prior to the offense, insofar as that is possible. The court shall spec-
5 ify a reasonable time for the completion of such restoration, which
6 shall be effected under the supervision of the commissioner or local
7 government. Each offense shall be a separate and distinct offense and,
8 in the case of a continuing offense, each day's continuance thereof
9 shall be deemed a separate and distinct offense.

10 § 11. Subdivision 1 of section 71-2305 of the environmental conserva-
11 tion law, as added by chapter 614 of the laws of 1975, is amended to
12 read as follows:

13 1. The attorney general, upon his or her own initiative or upon
14 complaint of the commissioner or local government, shall prosecute
15 persons alleged to have violated [~~any such order of the commissioner or~~
16 ~~local government pursuant to~~] article twenty-four of this chapter.

17 § 12. This act shall take effect immediately, provided, however, that
18 sections two, three, four, five, six, seven and eight of this act shall
19 take effect on January 1, 2023.