STATE OF NEW YORK

9502

IN SENATE

July 15, 2022

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to enacting the "Great Swamp protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The environmental conservation law is amended by adding a new article 59 to read as follows:

ARTICLE 59

GREAT SWAMP PROTECTION ACT

Section 59-0101. Short title.
59-0103. Legislative declaration.
59-0105. Legislative findings and intent.
59-0107. Definitions.
59-0109. Great Swamp reserve council.
59-0111. Duties of the council.
59-0113. Comprehensive management plan.
59-0115. Dedications to the Great Swamp preserve; legislative protection.
59-0117. Great Swamp joint planning and policy commission.
59-0119. Great Swamp comprehensive land use plan.
59-0121. Implementation of the Great Swamp comprehensive land use plan.
59-0123. Cooperation of state and municipal agencies.
59-0125. Acceptance of monies.
59-0127. Limitations on regulation of hunting, fishing and recreational activities; nonregulation of federal conservation activities.
59-0129. Effect on other laws.
59-0131. Judicial review.
59-0133. Severability.

§ 59-0101. Short title.

This article shall be known and may be cited as the "Great Swamp protection act".

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

LBD14806-01-2

§ 59-0103. Legislative declaration.

The legislature hereby declares it to be in the public interest to protect and manage the Great Swamp, in the counties of Dutchess and Putnam, by establishing the Great Swamp reserve. It is further in the public interest to establish a council made up of representatives of state and local governments and private citizens to prepare a comprehensive management plan and make recommendations to preserve, protect and enhance the natural, recreational, economic and educational values of the region, which the state and local governments may adopt. In addition, it is further in the public interest to establish a commission made up of a governor's appointee, the county executive of Dutchess and Putnam counties and the supervisors of the towns of Dover, Pawling, Patterson and Southeast to prepare, oversee and participate in the implementation of a comprehensive land use plan for the Great Swamp area to guide development therein in a manner suitable to the needs for preservation of the core preservation area and compatible growth and development in the compatible growth area.

§ 59-0105. Legislative findings and intent.

The legislature hereby finds that the counties of Dutchess and Putnam contain a wetland ecosystem of statewide importance known as the Great Swamp.

The legislature finds that within the Great Swamp the federal, state, county and local governments own and manage significant properties in the form of parks, preserves, historic sites and protected open space, where there is an interdependent and reciprocal relationship between human activities and natural processes, and where fishing, agriculture and tourism have been the dominant industries for more than three hundred fifty years.

The legislature finds that the Great Swamp, an area encompassing over six thousand acres in the counties of Dutchess and Putnam, is of critical importance to the state because it is a contiguous wetland. The Great Swamp is interconnected by the Swamp River and Ten Mile River, and the ecologic and hydrologic integrity of this system should be protected in a comprehensive plan adopted by the state and individual local governments.

The legislature also finds that the Great Swamp contains one of the greatest concentrations and diversities of endangered, threatened and special concern species of plants and animals to be found in the state, and that protection of their habitats is in the best interest of the people of New York. The legislature further finds that the Great Swamp contains many other unique natural, agricultural, historical, cultural and recreational resources that are mutually supportive and ultimately dependent upon maintenance of the hydrologic and ecologic integrity of this region.

Therefore, the legislature finds that the purpose of this article is to allow the state and local governments to protect, preserve and properly manage the unique natural resources of the Great Swamp and to encourage coordination of existing programs and studies affecting land and water resources in the region and to protect the value of the existing public and private investment that has already been made to acquire land in the region.

The legislature further finds that a portion of the system known as the Great Swamp area requires the preparation and implementation of a state supported regional comprehensive land use incentive plan that will assist in the preservation of the core preservation area, protection of the Great Swamp area and for the designation of compatible growth areas

to accommodate appropriate patterns of regional growth with recognition of the rights of private land owners and the purpose of preservation of the core area.

The legislature intends that a comprehensive regional land use plan be implemented whereby private landowners whose property is located within the Great Swamp area are afforded an opportunity to receive benefits from the plan such as transferable development rights, conservation easements, rights and values transfers, purchase of development rights, property tax incentives and/or fee acquisition with monetary compensation.

§ 59-0107. Definitions.

As used in this article, the following terms shall mean and include:

1. "Council" shall mean the Great Swamp reserve council created by section 59-0109 of this article.

2. "Great Swamp preserve" or "preserve" shall mean lands within the Great Swamp reserve that are critical to the protection of the hydrologic and ecologic integrity of the region including land characterized by a group of threatened species which are dedicated for protection and beneficial public use pursuant to section 59-0115 of this article. Lands which are not deemed critical may be dedicated pursuant to section 59-0115 of this article as a protective or buffer zone for other dedicated lands, or to otherwise support the management of the preserve.

3. "Plan" shall mean the comprehensive management plan created pursuant to section 59-0113 of this article.

4. "Reserve" shall mean a region in which there is a combination of publicly and privately owned lands and land uses, within a defined area where there are traditional cultural patterns including agriculture, tourism and general commercial and residential uses which due to their pattern and configuration, and because of the need for sustained productivity could best be protected and managed through the development of a comprehensive management plan around a preserve of protected, publicly owned lands and/or privately owned land dedicated for such purposes.

5. "Land use plan" shall mean the comprehensive Great Swamp land use plan pursuant to section 59-0119 of this article.

6. "Commission" shall mean the Great Swamp joint planning and policy commission established pursuant to section 59-0117 of this article.

7. "Advisory committee" shall mean the Great Swamp advisory committee to the commission established pursuant to subdivision 7 of section 59-0117 of this article.

8. "Agriculture" or "horticulture" shall mean any production of plants or animals useful to man, including but not limited to: forage or sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, and including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds including wineries; vegetables; nursery, floral, ornamental and greenhouse products and farmstands for selling products raised or produced on site and other associated structures required for their production.

§ 59-0109. Great Swamp reserve council.

1. There is hereby established, within the department, a Great Swamp reserve council to help local governments and the state coordinate the efforts of all municipal, county, state and federal agencies involved in the management of the preserve and to oversee and prepare a comprehensive intergovernmental management incentive plan for the Great Swamp reserve that the state and local governments may adopt.

2. The council shall be composed of thirteen voting members. The governor shall appoint two members. The county executive of the county of Putnam, with the advice and consent of the county legislature, shall appoint two members and the county executive of the county of Dutchess with the advice and consent of the county legislature shall appoint two members. The town supervisors of the towns of Dover, Pawling, Patterson and Southeast, shall each appoint one member. The commissioner or his or her designee, the commissioner of parks, recreation and historic preservation or his or her designee, and the commissioner of economic development or his or her designee for purposes of tourism shall serve as ex-officio members. All members, except ex-officio members shall be residents of the counties of Dutchess and Putnam and shall have demonstrated expertise in the functional areas to be addressed by the commission. All initial appointments shall be made within sixty days of the effective date of this article.

3. Members of the council shall serve for a term of two years or thereafter until a successor is appointed. A chairperson shall be designated by the governor. The council shall elect a vice-chairperson and such other officers as it may determine are necessary for the conduct of its duties.

4. Ten members of the council shall constitute a quorum.

5. The members of the council shall serve without compensation.

§ 59-0111. Duties of the council.

The council shall have the following powers and duties:

1. to conduct scientific and environmental studies;

2. to review and approve proposed dedications of lands to the Great Swamp preserve and recommend additional dedications to such preserve;

3. to utilize to the extent feasible, the staff and facilities of state agencies, subject to the approval of the director of the budget, and local agencies to carry out the provisions of this article;

4. to hold public hearings;

5. to contract within amounts appropriated for or otherwise available for professional and technical assistance or advice;

6. to meet not less than once every two months and to encourage the attendance at such meetings of representatives of local governments and interested parties affected by the deliberations of the council;

7. to send copies of the minutes of each meeting to each town and village within the Great Swamp reserve, the members of the assembly and senators representing such area and any other interested party upon request;

8. to encourage individuals, corporations, associations and public entities to protect and preserve the unique resources of the reserve including the preserve; and

9. to contract for and to accept assistance, including but not limited to gifts, easements or loans of funds or real property or personal property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the approval of the division of the budget. Notwithstanding the provisions of section 11 of the state finance law, the commission may accept gifts, grants, devises and bequests, whether conditional or unconditional, with the approval of the director of the budget.

§ 59-0113. Comprehensive management plan.

1. The council shall, after holding public hearings, prepare and adopt a comprehensive management incentive plan for the Great Swamp reserve,

which the state and local governments may adopt. Such plan shall include, but not be limited to:

(a) a statement of the public values of the area, including their educational, ecological and hydrological values, together with the general goals and policies which will best protect and enhance such values;

(b) a map of the area, delineating the boundaries of the Great Swamp reserve;

(c) a brief and general historical overview regarding the lands of the Great Swamp reserve;

(d) an inventory of all public lands and lands available for public use within the Great Swamp reserve specifying use, facilities for public use, and the management agency with jurisdiction over the property;

(e) management guidelines for the preservation, recreational and educational use of resources of the Great Swamp reserve;

(f) management guidelines for protecting and supporting indigenous economic activities like agriculture, recreation and tourism;

(g) a plan for protection and management for dedicated land in the Great Swamp preserve including:

(1) A survey or inventory of the following, together with the establishment of management priorities therefor:

(i) natural plant and wildlife resources;

(ii) historic resources;

(iii) erosion control needs, stream and wetlands protection;

(iv) trails, trail development and use; and

(v) other recreational uses.

(2) Recommendations for incentives pertaining to public use activities, which can be implemented by rules and regulations for the administration and use of lands dedicated to the preserve.

(3) Recommendations for acquisition of open space suitable for dedication in the preserve.

(4) Recommendations for institutional arrangements to coordinate management of dedicated land held by separate owners;

(h) a local participation plan, which describes how local citizens, officials and members of the tourism and agricultural industries will participate in the planning and implementation of the management program and which contains a statement identifying support for such program by the participating local governments; and

(i) a financial statement estimating the necessary costs and potential funding sources to carry out recommendations in the study over a five-year period and the benefits therefrom.

2. A draft plan shall be prepared and made available to the public and the local governments within the Great Swamp reserve prior to adopting the plan. The council shall hold public hearings at different locations within the Great Swamp reserve. There shall be two public hearings on the draft plan and there shall also be a public hearing on the completed plan before the plan is submitted to the commissioner.

§ 59-0115. Dedications to the Great Swamp preserve; legislative protection.

1. The commissioner shall maintain a record of the boundaries of the lands which have been dedicated to the Great Swamp preserve in text and depicted on a map.

2. Land owned by the state within the Great Swamp reserve may be dedicated to be part of the Great Swamp preserve by the action of the commissioner or the commissioner of parks, recreation and historic preservation, or by action of the legislature.

3. Land owned by a local government within the Great Swamp reserve may be dedicated to the Great Swamp preserve by the action of its local legislative body.

4. Land owned by private individuals within the Great Swamp reserve may be dedicated to be part of the Great Swamp preserve by the execution of a conservation easement.

5. Land in the core preservation area which come in the public domain shall be deemed to be dedicated to the Great Swamp preserve.

6. Except for the core preservation area which shall be deemed to be dedicated to the preserve, the council shall review and must approve each dedication of land to the preserve.

7. No publicly owned real property, dedicated to the Great Swamp preserve, shall be alienated except by law enacted by two successive regular sessions of the legislature, but easements for public water supply purposes may be maintained consistent with local ordinances.

8. The council shall have no authority to manage any private land unless such land has been voluntarily dedicated pursuant to this article or the owner has executed a voluntary written agreement with the council authorizing the specific management actions taken.

9. Nothing contained in this article shall affect any previous dedication of state land to the State Nature and Historic preserve. Any state land dedicated to the Great Swamp preserve may also be dedicated to the State Nature and Historic preserve.

§ 59-0117. Great Swamp joint planning and policy commission.

1. It is hereby found, determined and declared that the Great Swamp area is a major resource area of statewide significance where the hydrological and ecological integrity is endangered; that a public entity representative of town, county and state government is necessary and appropriate to plan, manage and oversee land use within the Great Swamp reserve in the public interest for present and future generations; and that the Great Swamp joint planning and policy commission created by this section and its purposes are in all respects for the benefit of the people of the state of New York and are a public purpose.

2. There is hereby established, the Great Swamp joint planning and policy commission to consist of seven voting members: one member appointed by the governor who will serve at the pleasure of the governor and six ex-officio members who are the county executive of Putnam county and the county executive of Dutchess county, and the supervisors of the towns of Dover, Pawling, Patterson and Southeast. Each ex-officio member may appoint a designated representative, by official authority filed with the commission, to exercise his or her powers and perform his or her duties, including the right to vote, on the commission. The commission shall elect one of its members as chairperson. Five members shall constitute a quorum for the transaction of any business or the exercise of any power or function of the commission. An affirmative vote of four or more members shall be required to pass a resolution or otherwise exercise any functions or powers of the commission, except the adoption of the plan which requires a unanimous vote of the commission.

3. The commission shall hold its initial meeting within thirty days of enactment of this section, following public notice by the counties of Dutchess and Putnam executives.

4. Every state agency and public corporation having jurisdiction of land or water within the Great Swamp area or of programs relating to the purposes and goals of this article shall, to the fullest extent practicable, offer full cooperation and assistance to the commission in carrying out the provisions of this article.

5. Every local or regional agency with activities relating to the Great Swamp area may offer assistance to the commission in carrying out the provisions of this article.

6. The commission shall have the power:

(a) To prepare, adopt, enforce and ensure implementation of the comprehensive land use plan, with the advice of the advisory committee;

(b) To sue and be sued;

(c) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article;

(d) To establish and maintain such facilities as may be necessary for the transacting of its business;

(e) To appoint an executive officer, officers, agents, employees, and prescribe their duties and qualifications and fix their compensation;

(f) To utilize to the extent feasible the staff and facilities of existing state and county agencies, pursuant to an agreement to be made by the state or by the counties of Dutchess and Putnam;

(g) To hold hearings in the exercise of its powers, functions and duties provided for by this article;

(h) To contract for professional and technical assistance and advice;

(i) To contract for and to accept any assistance, including but not limited to gifts, grants or loans of funds or of property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof;

(j) To establish guidelines which may include a system of bonuses and incentives in order to purchase, sell, hold and trade development rights as defined in paragraph a of subdivision 1 of section 261-a of the town law; such transfers may cross municipal and special district boundaries;

(k) To adopt, amend and repeal, after public hearing (except in the case of rules and regulations that relate to the organization or internal management of the agency), such rules and regulations, consistent with this article, as it deems necessary to administer this article, and to do any and all things necessary or appropriate to carry out the purposes and policies of this article and exercise powers granted by law;

(l) To provide scientific and technical assistance or to make grants to municipalities, towns and the county for revisions of local master plans, or the relevant ordinances designed to bring such plans and ordinances into conformance with the comprehensive land use plan prepared and adopted by the commission. The commission may make such grants from any funds which may be appropriated or otherwise made available to it for such purpose;

(m) To establish and maintain an education and outreach program relating to the commission's work;

(n) To convene conferences, seminars, meetings, technical sessions on its own or in coordination with federal, state, county, town or private organizations as deemed necessary relative to its responsibilities;

(o) To report periodically to the governor and the legislature on the conduct of its activities not less than once a year, furnishing a copy of each such report to the legislative bodies of Dutchess and Putnam counties and the towns and villages in whole or in part within the Great Swamp area;

(p) To assist local, county and state government in prioritization and negotiation with private landowners whose property is affected by the

land use plan, to evaluate the impact of any restrictions and develop a package of benefits; and

(q) To have and exercise such other incidental and usual powers as are necessary and appropriate to carry out its duties.

7. There is hereby created a Great Swamp advisory committee to actively assist and advise the commission in the preparation, adoption and implementation of the Great Swamp comprehensive land use plan. The committee shall consist of not more than twenty-eight members which shall include representatives of environmental groups, economic development and real estate interests, farmers, water suppliers, civic groups, planners, biologists, water quality scientists and recreational interests. The members of the committee shall serve without compensation. The initial members of the advisory committee shall include a representative of the friends of the Great Swamp, Putnam County Cornell Cooperative Extension, Dutchess county farm bureau, Putnam county economic development corporation, Eastern Putnam-Dutchess Planning Alliance, Greenway Conservancy, Putnam county board of realtors, The Harlem Valley Partnership, The Nature Conservancy, Environmental Defense Fund, Riverkeeper and a civic representative from each of the towns of Pawling, Patterson, Dover and Southeast designated by the supervisor thereof. The committee may be expanded as necessary to incorporate other interests in the development and preservation of the Great Swamp preserve. Each member shall serve at the pleasure of the entity which designated it. The committee by a majority vote shall elect a chairperson. The commission shall meet periodically with the advisory committee, make available working drafts and other documents, and shall provide services to the advisory committee as are necessary and appropriate to carry out its functions under this article.

§ 59-0119. Great Swamp comprehensive land use plan.

1. In preparation of the land use plan, the commission shall:

(a) consult with appropriate officials of any regional, state or federal agency which has jurisdiction over lands and waters within the Great Swamp area;

(b) consult with the officials of any municipality which has jurisdiction over lands and waters within the Great Swamp area;

(c) consult with interested professional, scientific and citizens' organizations; and

(d) consult with citizens' committees.

2. Following consultation with the advisory committee and within twelve months of the effective date of this section, the commission shall publish the draft land use plan. Within three months of such publication, the commission shall hold public informational meetings in the towns of Dover, Pawling, Patterson and Southeast and at least one public hearing within the Great Swamp area. During this period the commission shall receive and review comments on the draft land use plan-generic environmental impact statement from state and local governments and the public and within three months, the commission shall recommend a revised comprehensive land use plan pursuant to this article to the respective town boards of such towns for their ratification and adoption. Within two months of the commission recommending the plan to the respective town boards, the town boards shall perform a comprehensive review of the plan and shall provide final comments to the commission. The commission at its discretion may modify the plan as requested by the town representatives. After modifying the plan as necessary, the commission shall prepare a draft supplemental generic environmental impact statement and a final generic environmental impact statement, and

the towns and commission shall adopt the necessary statement of findings pursuant to article 8 of this chapter. Ratification and adoption of the plan by the town boards of Dover, Pawling, Patterson and Southeast shall represent commitment to implementation of the provisions contained therein. Upon ratification and adoption by such four towns, the commission itself will formally adopt the plan-generic environmental impact statement and its provisions shall be in full force. Adoption by the commission shall only be upon the signature of the governor, county executive of Dutchess and Putnam counties, supervisor of the town of Dover, supervisor of the town of Pawling, supervisor of the town of Patterson and the supervisor of the town of Southeast.

3. Not less than once every five years after the land use plan has become effective, the commission shall review and, if appropriate, make amendments to the land use plan and update the generic impact statement. Within each such period, the commission shall hold a public hearing and shall receive comments on the effectiveness of implementation of the land use plan. Not less than thirty days before voting on an amendment to the land use plan, the commission shall publish notice thereof in a newspaper of general circulation in the Great Swamp area.

§ 59-0121. Implementation of the Great Swamp comprehensive land use plan.

For the counties of Dutchess and Putnam, and each town or village implementing regulations wholly within the Great Swamp area approved by the commission, there may be defense by and shall be indemnity from the state in the event of legal actions or proceedings brought against any such municipalities or their agents, servants, officials or employees that may result from the municipal acquisition of land consistent with the land use plan or comprehensive management plan or the adoption or implementation of any land use control including, but not limited to, the provisions of a zoning law, ordinance, or regulation consistent with this article or required by the minimum standards and criteria of the land use plan. Indemnity shall not apply to any such claim in which a final court determination results in a finding of intentional wrongdoing, recklessness, or an unlawful discriminatory practice including the finding that the land use control was intended to exclude a particular group or individual, or gross negligence on the part of such municipality or its agents, servants, officials, or employees. Actions or proceedings brought under subdivisions 2, 2-a, 3-b, 4, paragraphs (a) and (b) of subdivision 5 and subdivisions 6, 7, 14, and 18 of section 296 of the executive law and 42 U.S.C. 55 1981, 1983, 1988 shall be indemnified by the state only so far as the grievance alleged in such action or proceeding was the result of an act consistent with this article or the plan.

1. Such indemnity shall apply only to the extent that any such claim exceeds any insurance coverage obtained by the commission from revenues in the Great Swamp fund.

2. Such indemnity shall be conditioned upon (a) delivery by the governing body or its agent against whom the legal action or proceeding was commenced to the attorney general or an assistant attorney general at an office of the department of law in the state the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen days after such document is served upon such governing body or its agent, and (b) the full cooperation of the governing body or its agents against whom the action or proceeding was commenced in the defense of such action or proceeding and in defense of any action or

proceeding against the state based upon the same act or omission, and in the prosecution of any appeal.

3. There shall be no indemnity in the event of a settlement between or among the parties to such legal action or proceeding in those instances in which the attorney general is not providing the defense for the governing body or its agents, unless such settlement is approved by the commission with the concurrence of the attorney general.

§ 59-0123. Cooperation of state and municipal agencies.

The council may request and shall be provided with such cooperation, assistance, services and data, from any department, agency, advisory board, task force, commission, bureau or any other agency having jurisdiction over land or water within the Great Swamp reserve, as are necessary to carry out the council's function pursuant to this article. The council shall coordinate its actions with the region 1 regional advisory committee, established by section 49-0209 of this chapter. Every state agency is authorized to provide, within amounts appropriated therefor and subject to the approval of the director of the budget, such assistance and services as the council may request.

§ 59-0125. Acceptance of monies.

The council may accept any grant or appropriation from federal, state and municipal sources and any gift for use to carry out the provisions of this article. Such monies shall be expended by the council to carry out the provisions of this article, except that such expenditures shall not exceed the grants, appropriations and gifts received by the council.

§ 59-0127. Limitations on regulation of hunting, fishing and recreational activities; nonregulation of federal conservation activities.

Nothing in this article shall be interpreted to authorize the regulation of hunting, fishing, trapping, possession of wildlife or other recreational activities in the Great Swamp reserve, except as otherwise provided by law. This article shall not apply to any action undertaken by any federal agency or federal department in fulfillment of its obligations or duties pursuant to any federal law, federal regulation, federal agency policy, or federal management activity relating to wildlife, game or nongame species management, habitat protection, or migratory species protection.

§ 59-0129. Effect on other laws.

Except as otherwise provided in the provisions of this article, this article shall not affect:

1. the police powers, local planning powers, zoning powers or authority to regulate land uses by villages and towns within the Great Swamp reserve; or

2. the police power of the state to regulate any activity carried out upon any lands, in the Great Swamp reserve; or

3. the authority of any state or public agency in the management of any state or public lands in the Great Swamp reserve.

§ 59-0131. Judicial review.

Any person aggrieved by a final determination by any governing body acting under this article, may within thirty days from the date of such determination seek judicial review pursuant to article 78 of the civil practice law and rules in the supreme court. The commission shall be a party to any such proceeding. In the event that the court finds that the determination of such governing body constitutes the equivalent of taking without just compensation, the commission may set aside the determination of such governing body, or if the land so regulated otherwise meets the goals and objectives of this article and if the commis-

sion or the governing body has sufficient funds therefor, the commission or the governing body may acquire such land or interest in lands as have been taken, proceeding under the power of eminent domain. All issues in any proceeding under the power of eminent domain shall have preference over all other civil actions or proceedings.

§ 59-0133. Severability.

The provisions of this article shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held invalid, the remainder of this article and the application thereof shall not be affected thereby.

§ 2. This act shall take effect immediately.