

STATE OF NEW YORK

9599

IN ASSEMBLY

March 23, 2022

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

AN ACT to amend the environmental conservation law, in relation to freshwater wetlands

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

Section 1. Subdivisions 1, 2, 3 and 7 of section 24-0105 of the environmental conservation law, as added by chapter 614 of the laws of 1975 and subdivision 7 as renumbered by chapter 654 of the laws of 1977, are amended to read as follows:

1. The freshwater wetlands of the state of New York are invaluable resources for flood protection, wildlife habitat, open space, climate change mitigation through the accumulation and storage of large amounts of carbon, and water resources.

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

3. Recurrent flooding aggravated or caused by the loss of freshwater wetlands has serious effects upon natural ecosystems and communities. The increasing frequency, severity and duration of storm-related flooding due to climate change, which has caused billions of dollars of property damage in the state, makes protection of all freshwater wetlands in the state of vital importance.

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

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

(b) wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare, endangered or threatened species ~~[such as the bald eagle and osprey]~~, fish, reptiles and amphibians, insects and other invertebrates;

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

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(c) protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies;

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

(e) pollution treatment by serving as biological and chemical oxidation basins and carbon sinks;

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

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

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

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

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

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

§ 2. The opening paragraph and paragraphs (c) and (d) of subdivision 1 and subdivisions 2, 3 and 8 of section 24-0107 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, are amended and five new subdivisions 9, 10, 11, 12 and 13 are added to read as follows:

"Freshwater wetlands" means lands and waters of the state ~~[as shown on the freshwater wetlands map which]~~ that are not tidal wetlands as defined in subdivision one of section 25-0103 of this chapter are one acre or more in size or, adjacent to a water body, including an intermittent water body, or of significant local importance for one or more of the specific benefits set forth in subdivision seven of section 24-0105 of this title, of unusual importance, or at the discretion of the commissioner. Freshwater wetlands shall contain any or all of the following:

(c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) of this subdivision or by dead vegetation as set forth in paragraph (b) of this subdivision, the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; ~~[and]~~

(d) lands and submerged lands that have a predominance of hydric soils and that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(e) the waters overlying the areas set forth in paragraphs (a) ~~[and]~~, (b) and (d) of this subdivision and the lands underlying the area set forth in paragraph (c) of this subdivision.

2. "Freshwater wetlands map" shall mean a map ~~[promulgated]~~ developed by the department pursuant to section 24-0301 of this article on which are indicated the boundaries of any freshwater wetlands. These maps will serve the purpose of educating the public on the location of wetlands. Such maps depict the approximate location of wetlands and are not necessarily determinative as to whether a permit is required pursuant to section 24-0701 of this article. There is a rebuttable presumption that mapped and unmapped areas meeting the definition of a freshwater wetland

in this section are regulated and subject to permit requirements. This presumption may be rebutted by presenting information to the department that the area does not meet the definition contained in this section. A wetland delineation by the department is required to identify the regulated boundaries of a freshwater wetland in a particular location.

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

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

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

(a) it is located in an area designated as a special flood hazard area on the most current federal emergency management agency flood insurance rate map;

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

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

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

(e) it was previously classified by the department as a wetland on or before April first, two thousand twenty-four;

(f) the department determines based on criteria established by regulation that its wetland functions and values are of local or regional significance;

(g) it is a vernal pool or otherwise isolated wetland that provides critical habitat for semi-aquatic organisms;

(h) it has one or more of the specific benefits set forth in subdivision seven of section 24-0105 of this title;

(i) it is located in a watershed that has experienced, or is expected to experience, significant flooding in the future from severe storm events;

(j) it was previously classified as a wetland of unusual local importance; or

(k) it is of significant importance in protecting the state's water quality.

10. "Hydric soil" shall mean soil that, in its undrained condition, is saturated, flooded or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

11. "Hydrophytic vegetation" shall mean a plant or plants growing in:

(a) water; or

(b) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

12. "Vernal pool" shall mean a surface water or wetland that provides breeding habitat for amphibians and invertebrates that have adapted to

1 the unique environments provided by such pools and which typically has
2 the following characteristics:

3 (a) cycles annually from flooded to dry conditions, although the
4 hydroperiod, size and shape of the pool might vary from year to year;

5 (b) forms in a shallow depression or basin;

6 (c) has no permanently flowing outlet;

7 (d) holds water for at least two continuous months following spring
8 ice out;

9 (e) lacks a viable fish population; and

10 (f) supports one or more primary vernal pool indicators as defined in
11 subdivision thirteen of this section.

12 13. "Primary vernal pool indicators" shall mean the presence or phys-
13 ical evidence of species including, but not limited to, amphibians,
14 reptiles, crustaceans, mollusks, annelids, and insects.

15 § 3. Section 24-0301 of the environmental conservation law, as
16 amended by chapter 654 of the laws of 1977, subdivision 1 as amended by
17 section 37 of part D of chapter 60 of the laws of 2012 and subdivisions
18 4, 5 and 6 as amended by chapter 16 of the laws of 2010, is amended to
19 read as follows:

20 § 24-0301. Commissioner's study.

21 1. The commissioner shall, as soon as practicable, conduct a study to
22 identify and map those individual freshwater wetlands in the state of
23 New York [~~which shall have an area of at least twelve and four tenths~~
24 ~~acres or more, or if less than twelve and four tenths acres, (a) have,~~
25 ~~in the discretion of the commissioner unusual local importance for one~~
26 ~~or more of the specific benefits set forth in subdivision seven of~~
27 ~~section 24-0105 of this article] as defined in section 24-0107 of this
28 article or (b) that are located within the Adirondack park and meet the
29 definition of wetlands contained in subdivision sixty-eight of section
30 eight hundred two of the executive law, and shall determine their char-
31 acteristics. This study shall, in addition to such other data as the
32 commissioner may determine to be included, including, but not limited to
33 available interactive maps, consist of the freshwater wetlands inventory
34 of the department [~~of environmental conservation~~], currently being made,
35 together with other available data on freshwater wetlands, whether
36 assisted by the state of New York under the tidal wetlands act or other-
37 wise, or assembled by federal or local governmental or private agencies,
38 all of which information shall be assembled and integrated, as applica-
39 ble, into a map of freshwater wetlands of the state of New York. Such
40 study may, in the discretion of the commissioner, be carried out on a
41 sectional or regional basis, as indicated by need, subject to overall
42 completion in an expeditious fashion subject to the terms of this chap-
43 ter. [~~This map, and any orders issued pursuant to the provisions of this~~
44 ~~article, shall comprise a part of the statewide environmental plan as~~
45 ~~provided for in section 3-0303 of this chapter.~~] As soon as practicable
46 the commissioner shall file with the secretary of state a detailed
47 description of the technical methods and requirements to be utilized in
48 compiling the inventory, and he shall afford the public an opportunity
49 to submit comments thereon.~~

50 2. Upon completion of a freshwater wetlands inventory, the commission-
51 er shall prepare a [~~tentative~~] draft freshwater wetlands map delineating
52 the boundaries of such wetlands as determined by the study and inventory
53 conducted pursuant to subdivision one of this section. The map may be
54 prepared for different sections or regions of the state separately, as
55 the commissioner shall determine. The commissioner shall consult and
56 cooperate with the Adirondack park agency in the preparation of a

1 ~~[tentative]~~ draft freshwater wetlands map for any area within the
2 Adirondack park.

3 3. The ~~[tentative]~~ draft freshwater wetlands map shall set forth the
4 boundaries of such wetlands as accurately as is practicable to inform
5 the owners thereof, the public and the department of the approximate
6 location of the actual boundaries of the wetlands, subject to motion for
7 delineation pursuant to this section, or more precise definition thereof
8 in the discretion of the commissioner. The commissioner shall take into
9 consideration, whenever possible, the boundaries of the local government
10 or governments within which the wetlands are located.

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

34 5. ~~[After considering the testimony given at such hearing and any~~
35 ~~other facts which may be deemed pertinent, after considering the rights~~
36 ~~of affected property owners and the ecological balance in accordance~~
37 ~~with the policy and purposes of this article, and, in the case of~~
38 ~~wetlands or portions thereof within the Adirondack park, after consult-~~
39 ~~ing with the Adirondack park agency, the commissioner shall promulgate~~
40 ~~by order the final freshwater wetlands map. Such order shall not be~~
41 ~~promulgated less than sixty days from the date of the hearing required~~
42 ~~by subdivision four of this section. A copy of the order, together with~~
43 ~~a copy of such map or relevant portion thereof shall be filed in the~~
44 ~~office of the clerk of each local government in which each such wetland~~
45 ~~or a portion thereof is located and, in the case of a map for any area~~
46 ~~within the Adirondack park, with the Adirondack park agency.] After~~
47 consideration of comments from the public the commissioner may make
48 alterations to the draft map consistent with section 24-0107 of this
49 article. The commissioner shall finalize the map and file a copy of the
50 map with the office of the clerk of each local government with jurisdic-
51 tion over part or all of the region shown on the map. The map filed with
52 a local government may, at the local government's request, be either a
53 physical copy of the final freshwater wetlands map, or, if available, a
54 digital file that represents it. ~~[The commissioner shall simultaneously~~
55 ~~give notice of such order to each owner of lands, as shown on the latest~~
56 ~~completed tax assessment rolls, designated as such wetlands by mailing a~~

~~copy of such order to such owner by certified mail in any case where a notice by certified mail was not sent pursuant to subdivision four of this section, and in all other cases by first class mail. The commissioner shall also give notice of such order at such time to the chief administrative officer of each local government within the boundaries of which any such wetland or a portion thereof is located. At the time of filing with such clerk or clerks, the commissioner shall also cause a copy of such order to be published in at least two newspapers having general circulation in the area where such wetlands are located.]~~ The

commissioner may post on the department's website a digital image that represents the final freshwater wetlands map.

6. Except as provided in subdivision eight of this section, the commissioner shall supervise the maintenance of such [~~boundary~~] freshwater wetlands maps, which shall be available to the public for inspection and examination at the regional office of the department in which the wetlands are wholly or partly located [~~and~~], in the office of the clerk of each county in which each such wetland or a portion thereof is located, and on the department's website. The commissioner may readjust the map thereafter [~~to clarify the boundaries of the wetlands, to correct any errors on the map, to effect any additions, deletions or technical changes on the map, and to reflect changes as have occurred as a result of the granting of permits pursuant to section 24-0703 of this article, or natural changes which may have occurred through erosion, accretion, or otherwise~~] at any time to depict more accurately the location of wetlands.

Notice of such readjustment shall be given in the same manner as set forth in subdivision [~~five~~] four of this section for the [~~promulgation~~] development of final freshwater wetlands maps. In addition, at the time notice is provided pursuant to subdivision [~~five~~] four of this section, the commissioner shall update any digital image of the map posted on the department's website to reflect such readjustment.

7. Except as provided in subdivision eight of this section, the commissioner may initiate, [~~upon his own initiative,~~] and shall initiate, upon a written request by a landowner whose land or a portion thereof may be included within a wetland, or upon the written request of another person or persons or an official body whose interests are shown to be affected, cause to be delineated more precisely the boundary line or lines of a freshwater wetland or a portion thereof. 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 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. 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 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 and on the agency's website.

§ 4. Subdivision 1 of section 24-0501 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, is amended to read as follows:

1 1. On or after September 1, 1975, each local government may adopt,
2 amend, and~~[, upon the filing of the appropriate freshwater wetlands~~
3 ~~map,]~~ implement a freshwater wetlands protection law or ordinance in
4 accordance with this article to be applicable to all freshwater wetlands
5 wholly or partially within its jurisdiction. No freshwater wetlands
6 protection law or ordinance adopted by a county pursuant to this section
7 shall be applicable within the boundaries of any city, town or village
8 which has adopted and is implementing a local freshwater wetlands
9 protection law or ordinance consistent with this article.

10 § 5. Section 24-0507 of the environmental conservation law, as amended
11 by section 42 of part D of chapter 60 of the laws of 2012, is amended to
12 read as follows:

13 § 24-0507. Reservation of local jurisdiction.

14 Except as provided in this article, jurisdiction over all areas which
15 would qualify as freshwater wetlands except that they are not designated
16 as such on the freshwater wetlands map pursuant to section 24-0301 of
17 this article because they are less than ~~[twelve and four tenths acres]~~
18 one acre in size, are not of unusual importance as defined in subdivi-
19 sion nine of section 24-0107 of this article, and are not of unusual
20 local importance is reserved to the city, town or village in which they
21 are wholly or partially located, and the implementation of this article
22 with respect thereto is the responsibility of said city, town or
23 village, in accordance with section 24-0501 and title twenty-three of
24 article seventy-one of this chapter, except that a city, town or village
25 in the exercise of its powers under this section, shall not be subject
26 to the provisions of subdivision four of section 24-0501, subdivisions
27 two and three of section 24-0503, or section 24-0505 of this article.

28 § 6. Subdivisions 1, 2 and 4 of section 24-0701 of the environmental
29 conservation law, subdivisions 1 and 2 as amended by chapter 654 of the
30 laws of 1977 and subdivision 4 as amended by chapter 697 of the laws of
31 1979, are amended and a new subdivision 9 is added to read as follows:

32 1. ~~[After issuance of the official freshwater wetlands map of the~~
33 ~~state, or of any selected section or region thereof, any]~~ Any person
34 desiring to conduct on freshwater wetlands ~~[as so designated thereon]~~ or
35 the regulated areas adjacent to those wetlands set forth in subdivision
36 two of this section any of the regulated activities set forth in subdivi-
37 sion two of this section must obtain a permit as provided in this
38 title.

39 2. Activities subject to regulation under subdivision one of this
40 section shall include subdivision of parcels of land containing freshwa-
41 ter wetlands and any form of draining, dredging, excavation, removal of
42 soil, mud, sand, shells, gravel or other aggregate from any freshwater
43 wetland, either directly or indirectly; and any form of dumping, fill-
44 ing, or depositing of any soil, stones, sand, gravel, mud, rubbish or
45 fill of any kind, either directly or indirectly; erecting any struc-
46 tures, roads, the driving of pilings, or placing of any other
47 obstructions whether or not changing the ebb and flow of the water; any
48 form of pollution, including but not limited to, installing a septic
49 tank, running a sewer outfall, discharging sewage treatment effluent or
50 other liquid wastes into or so as to drain into a freshwater wetland;
51 and any other activity which substantially impairs any of the several
52 functions served by freshwater wetlands or the benefits derived there-
53 from which are set forth in section 24-0105 of this article. These
54 activities are subject to regulation whether or not they occur upon the
55 wetland itself, if they impinge upon or otherwise substantially affect
56 the wetlands and are located not more than one hundred feet from the

boundary of such wetland. Provided, that a greater distance from any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.

4. ~~[The]~~ On lands in active agricultural or silvicultural 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 in such a manner as not to destroy or permanently alter such wetlands 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. All activities on lands that meet the definition of a freshwater wetland shall be subject to the provision of this article once agricultural or silvicultural activities cease.

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

§ 7. 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 section 27-0701 of this chapter is required for a proposed activity. The department shall give a definite answer in writing within ~~[thirty]~~ sixty days of such request as to ~~[whether]~~ the status of such parcel ~~[will or will not be so designated]~~ and whether a permit is required for the proposed activity. Provided that, in the event that weather or ground conditions prevent the department from making a determination within ~~[thirty]~~ sixty days, it may extend such period until a determination can be made. Such answer in the affirmative shall be reviewable; such an answer in the negative shall be a complete defense to the enforcement of this article as to such parcel of land for a period of five years from the date the department issues the negative answer. ~~[The commissioner may by regulation adopted after public hearing exempt categories or classes of wetlands or individual wetlands which he determines not to be critical to the furtherance of the policies and purposes of this article.]~~

§ 8. Subdivision 1 of section 24-0705 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, is amended to read as follows:

1 1. In granting, denying or limiting any permit, the local government
2 or the commissioner shall consider the effect of the proposed activity
3 with reference to the public health and welfare, climate change, fish-
4 ing, flood, hurricane and storm dangers, and protection or enhancement
5 of the several functions of the freshwater wetlands and the benefits
6 derived therefrom which are set forth in section 24-0103 of this arti-
7 cle. The effects of the proposed activity shall be considered by the
8 department or a local government, as the case may be, irrespective of
9 political boundaries.

10 § 9. Subdivisions 1 and 4 of section 24-0901 of the environmental
11 conservation law, subdivision 1 as added by chapter 614 of the laws of
12 1975 and subdivision 4 as amended by chapter 654 of the laws of 1977,
13 are amended to read as follows:

14 1. ~~Upon completion of the freshwater wetlands map, the~~ The commis-
15 sioner shall confer with local government officials in each region in
16 which the inventory has been conducted to establish a program for the
17 protection of the freshwater wetlands of the state.

18 4. A cooperative agreement with any such village, town, city or county
19 may provide for the development by personnel and facilities of the
20 department or the payment out of funds appropriated therefor, including
21 but not limited to the environmental protection fund established pursu-
22 ant to section ninety-two-s of the state finance law, for the purpose of
23 preserving, maintaining, or enhancing such wetlands in accordance with
24 the policies of this article, and for the furnishing of such personnel,
25 facilities or funds as may be agreed upon by the parties to the cooper-
26 ative agreement.

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

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

42 5. Prior to the adoption of any land use regulations governing fresh-
43 water wetlands, the commissioner shall hold a public hearing thereon in
44 the area in which the affected freshwater wetlands are located, and give
45 fifteen days prior notice thereof by posting on the department's website
46 and by publication at least once in a newspaper having general circu-
47 lation in the area of the local government involved. The commissioner
48 shall promulgate the regulations within thirty days of such hearing and
49 publish such order at least once in a newspaper having general circu-
50 lation in the area of the local government affected and make such plan
51 available for public inspection and review; and may also post such
52 information on the department's website. Any such order shall not take
53 effect until thirty days after the filing thereof with the clerk of the
54 county in which such wetland is located.

55 § 11. Article 24 of the environmental conservation law is amended by
56 adding a new title 11 to read as follows:

TITLE 11FRESHWATER WETLANDS APPEAL BOARDSection 24-1101. Freshwater wetlands appeal board.24-1103. Powers.§ 24-1101. Freshwater wetlands appeal board.

1. There is hereby created in the department an appeals board to be known as the freshwater wetlands appeals board, hereinafter in this article referred to as the board, consisting of five members.

2. Three members of such board shall be appointed by the governor for terms of two years, one of who shall be the chair of the board and serve as its chief executive officer; and two members shall be appointed each by the senate majority and assembly majority for a term of three years. No member of the board shall be an employee of the state or any political subdivision thereof. The chair of the board shall have the power and the duty to promote the efficient transaction of the business of the board. Each member shall continue to hold office until a successor is appointed or designated and duly qualified. A member chosen to fill a vacancy created otherwise than by expiration of a term shall be designated or appointed as the case may be, for the unexpired term of the member they are succeeding.

3. Appeals shall be heard by one member of the board in one of the counties wherein the freshwater wetlands affected by such appeal are located and a majority vote of the members of the entire board shall be necessary for a determination of such appeal.

4. The chair of the board and two other executive appointments shall be attorneys, admitted to practice before the supreme court. Each member of the board shall be reimbursed for actual and necessary expenses incurred in the performances of their duties.

§ 24-1103. Powers.

1. The board shall have the power and it shall be its duty:

(a) To meet and function at any place within the state;

(b) To adopt, promulgate, amend and rescind suitable procedural rules with respect to the functioning of the board and the setting of time limits for the hearing of appeals, the rendering of decisions thereon, and the filing of the determinations, decision or order of the board with the clerk of the county in which the freshwater wetland is located;

(c) To hear appeals by any party to any proceeding before the commissioner or local jurisdiction from all orders or decisions of the commissioner or local jurisdiction issued or made pursuant to this article, provided such appeals are commenced by the filing of a notice of appeal with the board within thirty days of service of such order or after notice of such decision given, as the case may be;

(d) To review any decision or order of the commissioner or local government made pursuant to this article upon appeal therefrom by any person or municipal corporation affected thereby, providing such review is commenced by the filing with the board of a notice of review within thirty days of filing of service of such order or after notice of such decision given, as the case may be;

(e) To receive briefs, and, where the board deems it advisable, to hear oral argument with respect to such appeals;

(f) To require the submission to it by the commissioner or local jurisdiction of an original or certified copy of the entire record on which any order or decision appealed from is based, which record may not be reproduced; and

1 (g) To stay the effectiveness of any order or decision of the commis-
2 sioner or local jurisdiction pending the determination of an appeal in
3 proper cases and on such terms and conditions as the board may require.

4 2. The board may affirm, remand or reverse any order or decision of
5 the commissioner or local government or remand the matter to the commis-
6 sioner or local government for further proceedings in whole, or with
7 respect to any part thereof, or with respect to any party, provided
8 however that the board shall limit its review to whether the order or
9 decision of the commissioner or local government is:

10 (a) In conformity with the constitution and the laws of the state and
11 the United States;

12 (b) Within the commissioner's or local government's statutory juris-
13 isdiction or authority;

14 (c) Made in accordance with procedures required by law or established
15 by appropriate rules or regulations of the commissioner or local govern-
16 ment;

17 (d) Supported by substantial evidence on the whole record; or

18 (e) Not arbitrary, capricious or characterized by abuse or discretion
19 or clearly unwarranted exercise of discretion.

20 3. The commissioner or local government shall be bound by the decision
21 of the board except to the extent such decision is reserved or otherwise
22 modified by a court of competent jurisdiction pursuant to this article.

23 § 12. Section 24-1305 of the environmental conservation law, as added
24 by chapter 771 of the laws of 1976, is amended to read as follows:

25 § 24-1305. Applicability.

26 The provisions of this article shall not apply to any land use,
27 improvement or development for which final approval shall have been
28 obtained prior to the effective date of this article from the local
29 governmental authority or authorities having jurisdiction over such land
30 use. As used in this section, the term "final approval" shall mean[+]

31 ~~(a) in the case of the subdivision of land, conditional approval of a~~
32 ~~final plat as the term is defined in section two hundred seventy six of~~
33 ~~the town law, and approval as used in section 7-728 of the village law~~
34 ~~and section thirty-two of the general cities law;~~

35 ~~(b) in the case of a site plan not involving the subdivision of land,~~
36 ~~approval by the appropriate body or office of a city, village or town of~~
37 ~~the site plan; and~~

38 ~~(c) in those cases not covered by subdivision (a) or (b) above,]~~ the
39 issuance of a building permit or other authorization for the commence-
40 ment of the use, improvement or development for which such permit or
41 authorization was issued or in those local governments which do not
42 require such permits or authorizations, the actual commencement of the
43 use, improvement or development of the land.

44 § 13. Section 54-1501 of the environmental conservation law, as added
45 by section 5 of part U of chapter 58 of the laws of 2016, is amended to
46 read as follows:

47 § 54-1501. Definition.

48 For purposes of this title, "climate smart community projects" shall
49 mean adaptation and mitigation projects, wetlands management, including
50 cooperative agreements pursuant to section 24-0901 of this chapter,
51 including flood mitigation and coastal and riparian resiliency, green-
52 house gas reductions outside the power sector and climate change adapta-
53 tion planning, and clean vehicle projects.

54 § 14. Paragraph b of subdivision 1 of section 54-1523 of the environ-
55 mental conservation law, as added by section 5 of part U of chapter 58
56 of the laws of 2016, is amended to read as follows:

b. nature-based solutions such as wetland protections, including mapping and cooperative agreements pursuant to section 24-0901 of this chapter, to address physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable;

§ 15. Subdivision 8 of section 70-0117 of the environmental conservation law, as added by section 1 of part AAA of chapter 59 of the laws of 2009, is amended to read as follows:

8. (a) All persons required to obtain a permit from the department pursuant to section 24-0701 of this chapter shall submit to the department an application fee in an amount not to exceed the following:

(i) ~~[fifty]~~ one hundred dollars per application for a ~~[permit for a minor project as defined in this article or]~~ modification to any existing permit issued pursuant to section 24-0701 of this chapter;

(ii) ~~[fifty]~~ three hundred dollars per application for ~~[a permit for a residential project defined as associated with]~~ one new single family dwelling and customary appurtenances thereto;

(iii) ~~[one]~~ five hundred dollars per application for a new multiple single family dwelling, new multiple family dwelling and customary appurtenances thereto;

(iv) ~~[two]~~ one thousand dollars per application for new commercial or industrial structures or improvements;

(v) one hundred dollars per application for a permit for any other project as defined in this article.

(b) All persons required to obtain a permit from the department pursuant to section 25-0402 of this chapter shall submit to the department an application fee in an amount not to exceed the following:

(i) ~~[two]~~ three hundred dollars per application for a permit for a minor project as defined in this article or modification to any existing permit issued pursuant to section 25-0402 of this chapter;

(ii) ~~[nine hundred]~~ two thousand dollars per application for a subdivision of land or new commercial or industrial structures or improvements;

(iii) one thousand dollars per application for a permit for a project as defined in this article.

(c) All fees collected pursuant to this subdivision shall be deposited into the environmental protection fund pursuant to section ninety-two-s of the state finance law.

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

1. Administrative sanctions. (a) Any person who violates, disobeys or disregards any provision of article twenty-four, including title five and section 24-0507 thereof or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty of not to exceed eleven thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, by the commissioner or local government. Such penalty assessed by the commissioner or local government may be recovered in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner or local government before the matter has been referred to the attorney

1 general; and where such matter has been referred to the attorney gener-
2 al, any such penalty may be released or compromised and any action
3 commenced to recover the same may be settled and discontinued by the
4 attorney general with the consent of the commissioner or local govern-
5 ment. In addition, the commissioner or local government shall have
6 power, following a hearing held in conformance with the procedures set
7 forth in section 71-1709 of this article, to direct the violator to
8 cease [~~his violation of~~] violating the act and to restore the affected
9 freshwater wetland to its condition prior to the violation, insofar as
10 that is possible within a reasonable time and under the supervision of
11 the commissioner or local government. Any such order of the commissioner
12 or local government shall be enforceable in an action brought by the
13 attorney general at the request and in the name of the commissioner or
14 local government in any court of competent jurisdiction. Any civil
15 penalty or order issued by the commissioner or local government pursuant
16 to this subdivision shall be reviewable in a proceeding pursuant to
17 article seventy-eight of the civil practice law and rules.

18 (b) Upon determining that significant damage to the functions and
19 benefits of a freshwater wetland is occurring or is imminent as a result
20 of any violation of article twenty-four of this chapter, including but
21 not limited to (i) activity taking place requiring a permit under arti-
22 cle twenty-four of this chapter but for which no permit has been granted
23 or (ii) failure on the part of a permittee to adhere to permit condi-
24 tions, the commissioner or local government shall have power to
25 direct the violator to cease and desist from violating the act. In such
26 cases the violator shall be provided an opportunity to be heard within
27 ten days of receipt of the notice to cease and desist.

28 2. Criminal sanctions. Any person who violates any provision of arti-
29 cle twenty-four of this chapter, including any rule or regulation, local
30 law or ordinance, permit or order issued pursuant thereto, shall, in
31 addition, for the first offense, be guilty of a violation punishable by
32 a fine of not less than two thousand nor more than [~~four~~] five thousand
33 dollars; for a second and each subsequent offense [~~he~~] they shall be
34 guilty of a misdemeanor punishable by a fine of not less than four thou-
35 sand nor more than [~~seven~~] ten thousand dollars or a term of imprison-
36 ment of not less than fifteen days nor more than six months or both.
37 [~~Instead of~~] In addition to these punishments, any offender may be
38 punishable by being ordered by the court to restore the affected fresh-
39 water wetland or area immediately adjacent thereto to its condition
40 prior to the offense, insofar as that is possible. The court shall spec-
41 ify a reasonable time for the completion of such restoration, which
42 shall be effected under the supervision of the commissioner or local
43 government. Each offense shall be a separate and distinct offense and,
44 in the case of a continuing offense, each day's continuance thereof
45 shall be deemed a separate and distinct offense.

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

49 1. The attorney general, upon [~~his~~] their own initiative or upon
50 complaint of the commissioner or local government, shall prosecute
51 persons alleged to have violated [~~any such order of the commissioner or~~
52 ~~local government pursuant to~~] of this chapter.

53 § 18. This act shall take effect immediately and shall apply to all
54 permits issued on or after January 1, 2024.