

STATE OF NEW YORK

9220

IN SENATE

May 6, 2024

Introduced by Sen. HARKHAM -- 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 enacting the "Great Swamp protection act"

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

1 Section 1. The environmental conservation law is amended by adding a
2 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 commission.

59-0111. Duties of the commission.

59-0113. Comprehensive land use and management plan.

59-0115. Implementation of the Great Swamp comprehensive land
use and management plan.

59-0117. Dedications to the Great Swamp preserve; legislative
protection.

59-0119. Great Swamp advisory committee.

59-0121. Limitations on regulation of hunting, fishing and
recreational activities; nonregulation of federal
conservation activities.

59-0123. Effect on other laws.

59-0125. Judicial review.

59-0127. Severability.

§ 59-0101. Short title.

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

§ 59-0103. Legislative declaration.

The legislature hereby declares it to be in the public interest to
protect and manage the Great Swamp, in the county of Dutchess and

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

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1 Putnam, by establishing the Great Swamp reserve. It is further in the
2 public interest to establish a commission made up of representatives of
3 state, county, and local governments to prepare a comprehensive land use
4 and management plan and make recommendations to preserve, protect and
5 enhance the natural, recreational, economic and educational values of
6 the region, which the state and local governments may adopt.

7 § 59-0105. Legislative findings and intent.

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

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

18 The legislature finds that the Great Swamp, an area encompassing over
19 six thousand acres in the counties of Dutchess and Putnam, is of crit-
20 ical importance to the state because it is a wetland comprised of two
21 critical watersheds. The Great Swamp is interconnected by the Swamp
22 River and the East Branch Croton River, and the ecologic and hydrologic
23 integrity of this system must be protected.

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

33 Therefore, the legislature finds that the purpose of this article is
34 to allow the state and local governments to protect, preserve and prop-
35 erly manage the unique natural resources of the Great Swamp and to
36 encourage coordination of existing programs and studies affecting land
37 and water resources in the region and to protect the value of the exist-
38 ing public and private investment that has already been made to acquire
39 land in the region.

40 The legislature further finds that a portion of the system known as
41 the Great Swamp area requires the preparation and implementation of a
42 state supported comprehensive land use and management plan that will
43 assist in the preservation of the core preservation area, protection of
44 the Great Swamp area and for the designation of compatible growth areas
45 to accommodate appropriate patterns of regional growth with recognition
46 of the rights of private land owners and the purpose of preservation of
47 the core area.

48 § 59-0107. Definitions.

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

50 1. "Commission" shall mean the Great Swamp reserve commission created
51 by section 59-0109 of this article.

52 2. "Great Swamp preserve" or "preserve" shall mean lands within the
53 Great Swamp reserve that are critical to the protection of the hydrolog-
54 ic and ecologic integrity of the region including land characterized by
55 a group of threatened species which are dedicated for protection and
56 beneficial public use pursuant to section 59-0117 of this article. Lands

1 which are not deemed critical may be dedicated pursuant to section
2 59-0115 of this article as a protective or buffer zone for other dedi-
3 cated lands, or to otherwise support the management of the preserve.

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

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

14 5. "Advisory committee" shall mean the Great Swamp advisory committee
15 to the commission established pursuant to section 59-0119 of this arti-
16 cle.

17 6. "Agriculture" or "horticulture" shall mean any production of plants
18 or animals useful to man, including but not limited to: forage or sod
19 crops; grains and feed crops; dairy animals and dairy products; poultry
20 and poultry products; livestock, including beef cattle, sheep, swine,
21 horses, ponies, mules or goats, and including the breeding and grazing
22 of any or all of such animals; bees and apiary products; fur animals;
23 trees and forest products; fruits of all kinds including wineries; vege-
24 tables; nursery, floral, ornamental and greenhouse products and farm-
25 stands for selling products raised or produced on site and other associ-
26 ated structures required for their production.

27 § 59-0109. Great Swamp reserve commission.

28 1. Upon the adoption of the Great Swamp comprehensive land use and
29 management plan the Great Swamp reserve commission shall be established
30 within the department to help local governments and the state coordinate
31 the efforts of all municipal, county, state and federal agencies
32 involved in the management of the preserve and to oversee the comprehen-
33 sive land use and management plan for the Great Swamp reserve that state
34 and local governments may adopt.

35 2. The commission shall be composed of thirteen voting members. The
36 governor shall appoint two members. The county executive of the county
37 of Putnam, with the advice and consent of the county legislature, shall
38 appoint two members and the county executive of the county of Dutchess
39 with the advice and consent of the county legislature shall appoint two
40 members. The town supervisors of the towns of Dover, Pawling, Patterson
41 and Southeast or such town supervisors' designees shall serve as
42 members. The commissioner or their designee, the secretary of state or
43 their designee, and the commissioner of economic development or their
44 designee for purposes of tourism shall serve as ex-officio members. All
45 members, except ex-officio members shall be residents of the counties of
46 Dutchess and Putnam and shall have demonstrated expertise in the func-
47 tional areas to be addressed by the commission. All initial appointments
48 shall be made within sixty days of the effective date of this article.
49 The chief executive officer of any other state agency may be called to
50 serve as an ex-officio member if deemed necessary by the department.

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

1 4. Ten members of the commission shall constitute a quorum. An affir-
2 mative vote of nine or more members shall be required to pass a resol-
3 ution or otherwise exercise any functions or powers of the commission,
4 except the adoption of the plan which requires a unanimous vote of the
5 commission.

6 5. The members of the commission shall serve without compensation.

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

10 § 59-0111. Duties of the commission.

11 The commission shall have the following powers and duties:

12 1. to enforce and ensure implementation of the comprehensive land use
13 and management plan, with the advice of the advisory committee;

14 2. to conduct scientific and environmental studies;

15 3. to make and execute contracts and all other instruments necessary
16 or convenient for the exercise of its powers and functions under this
17 article;

18 4. to establish and maintain such facilities as may be necessary for
19 the transacting of its business;

20 5. to appoint an executive officer, officers, agents, employees, and
21 prescribe their duties and qualifications and fix their compensation;

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

24 7. to utilize to the fullest extent practicable, the staff and facili-
25 ties of state agencies, subject to the approval of the director of the
26 budget, and local agencies to carry out the provisions of this article;

27 8. to hold public hearings in the exercise of its powers, functions,
28 and duties provided for by this article;

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

31 10. to meet not less than once every two months beginning thirty days
32 after the enactment of this section, following public notice by the
33 counties of Dutchess and Putnam, and to encourage the attendance at such
34 meetings of representatives of local governments and interested parties
35 affected by the deliberations of the commission;

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

40 12. to establish and maintain an education and outreach program, in
41 partnership with the advisory committee, and including but not limited
42 to maintaining a public website relating to the commission's work;

43 13. to encourage individuals, corporations, associations and public
44 entities to protect and preserve the unique resources of the reserve
45 including the preserve;

46 14. to contract for and to accept assistance, including but not limit-
47 ed to gifts, easements or loans of funds or real property or personal
48 property from the federal government or any agency or instrumentality
49 thereof, or from any agency or instrumentality of the state, or from any
50 other public or private source and to comply, subject to the provisions
51 of this article, with the terms and conditions thereof, subject to the
52 approval of the division of the budget. Notwithstanding the provisions
53 of section eleven of the state finance law, the commission may accept
54 gifts, grants, devises and bequests, whether conditional or uncondi-
55 tional, with the approval of the director of the budget;

56 15. to sue and be sued;

1 16. to assist local, county, and state government in prioritization
2 and negotiation with private landowners whose property is affected by
3 the land use plan, to evaluate the impact of any restrictions and devel-
4 op a package of benefits;

5 17. to adopt, amend and repeal, after public hearing, except in the
6 case of rules and regulations that relate to the organization or inter-
7 nal management of the commission, such rules and regulations, consistent
8 with this article, as it deems necessary to administer this article and
9 exercise powers granted by law;

10 18. to provide scientific and technical assistance or to make grants
11 to municipalities, towns, and counties for revisions of local plans, or
12 the relevant ordinances designed to bring such plans into conformance
13 with the comprehensive land use and management plan. The commission may
14 make such grants from any funds which may be appropriated or otherwise
15 made available to it for such purpose;

16 19. to convene conferences, seminars, meetings, and technical sessions
17 on its own or in coordination with federal, state, county, town, or
18 private organizations as deemed necessary relative to its responsibil-
19 ities;

20 20. to report periodically to the governor and the legislature on the
21 conduct of its activities not less than once a year, furnishing a copy
22 of each such report to the legislative bodies of Dutchess and Putnam
23 counties and the towns and villages in whole or in part within the Great
24 Swamp area; and

25 21. to have and exercise such other incidental and usual powers as are
26 necessary and appropriate to carry out its duties.

27 § 59-0113. Comprehensive land use and management plan.

28 1. The department shall, after holding public hearings, prepare and
29 adopt a comprehensive land use and management plan for the Great Swamp
30 reserve, which the state and local governments may adopt. Such plan
31 shall be drafted in consultation with appropriate officials of any
32 regional, state, or federal agency which has jurisdiction over lands and
33 waters within the Great Swamp area, and any additional interested
34 professional, scientific, and citizens' organizations. Such plan shall
35 include, but not be limited to:

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

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

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

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

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

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

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

53 (1) A survey or inventory of the following, together with the estab-
54 lishment of management priorities therefor:

55 (i) natural plant and wildlife resources;

56 (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 digitally and upon request and the local governments within the Great Swamp reserve within twelve months of the effective date of this section and prior to adopting the plan. The department shall hold public meetings in the towns of Dover, Pawling, Patterson, and Southeast and at least one meeting within the Great Swamp reserve. Within two months of the department 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 department. The department at its discretion may modify the plan as requested by the town representatives. After modifying the plan as necessary, the department shall prepare a draft supplemental generic environmental impact statement and a final generic environmental impact statement, and the towns and department 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 department itself will formally adopt the plan and its provisions shall be in full force.

3. Not less than once every five years after the land use plan has become effective, the commission, in consultation with the department, 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 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.

§ 59-0115. Implementation of the Great Swamp comprehensive land use and management plan.

1. For the counties of Dutchess and Putnam, and each town or village implementing regulations wholly within the Great Swamp area approved by the department, 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,

1 the provisions of a zoning law, ordinance, or regulation consistent with
2 this article or required by the minimum standards and criteria of the
3 land use plan.

4 2. Indemnity shall not apply to any such claim in which a final court
5 determination results in a finding of intentional wrongdoing, reckless-
6 ness, or an unlawful discriminatory practice including the finding that
7 the land use control was intended to exclude a particular group or indi-
8 vidual, or gross negligence on the part of such municipality or its
9 agents, servants, officials, or employees. Actions or proceedings
10 brought under subdivisions two, two-a, three-b, four, paragraphs (a) and
11 (b) of subdivision five and subdivisions six, seven, and eighteen of
12 section two hundred ninety-six of the executive law and 42 U.S.C. 55
13 1981, 1983 and 1988 shall be indemnified by the state only so far as the
14 grievance alleged in such action or proceeding was the result of an act
15 consistent with this article or the plan.

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

19 4. Such indemnity shall be conditioned upon (a) delivery by the
20 governing body or its agent against whom the legal action or proceeding
21 was commenced to the attorney general or an assistant attorney general
22 at an office of the department of law in the state the original or a
23 copy of any summons, complaint, process, notice, demand or pleading
24 within fifteen days after such document is served upon such governing
25 body or its agent, and (b) the full cooperation of the governing body or
26 its agents against whom the action or proceeding was commenced in the
27 defense of such action or proceeding and in defense of any action or
28 proceeding against the state based upon the same act or omission, and in
29 the prosecution of any appeal.

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

35 § 59-0117. Dedications to the Great Swamp preserve; legislative
36 protection.

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

40 2. Land owned by the state within the Great Swamp reserve may be dedi-
41 cated to be part of the Great Swamp preserve by the action of the
42 commissioner or the commissioner of parks, recreation and historic pres-
43 ervation, or by action of the legislature.

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

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

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

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

55 7. No publicly owned real property, dedicated to the Great Swamp
56 preserve, shall be alienated except by law enacted by two successive

1 regular sessions of the legislature, but easements for public water
2 supply purposes may be maintained consistent with local ordinances.

3 8. The commission shall have no authority to manage any private land
4 unless such land has been voluntarily dedicated pursuant to this article
5 or the owner has executed a voluntary written agreement with the commis-
6 sion authorizing the specific management actions taken.

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

11 § 59-0119. Great Swamp advisory committee.

12 Upon the adoption of the Great Swamp comprehensive land use and
13 management plan the Great Swamp advisory committee shall be created. The
14 advisory committee shall actively assist and advise the commission in
15 the implementation of the Great Swamp comprehensive land use and manage-
16 ment plan. The advisory committee shall consist of not more than twen-
17 ty-eight members which shall include representatives of environmental
18 groups, economic development and real estate interests, farmers, water
19 suppliers, civic groups, planners, biologists, water quality scientists
20 and recreational interests. The members of the committee shall serve
21 without compensation. The initial members of the advisory committee
22 shall include a civic representative from each of the towns of Pawling,
23 Patterson, Dover and Southeast designated by the supervisor thereof. The
24 committee may be expanded as necessary by the commission to incorporate
25 other interests in the development and preservation of the Great Swamp
26 preserve. Each member shall serve at the pleasure of the entity which
27 designated it. The committee by a majority vote shall elect a chair-
28 person. The commission shall meet periodically with the advisory commit-
29 tee, make available working drafts and other documents, and shall
30 provide services to the commission as are necessary and appropriate to
31 carry out its functions under this article.

32 § 59-0121. Limitations on regulation of hunting, fishing and recreation-
33 al activities; nonregulation of federal conservation activ-
34 ities.

35 Nothing in this article shall be interpreted to authorize the regu-
36 lation of hunting, fishing, trapping, possession of wildlife or other
37 recreational activities in the Great Swamp reserve, except as otherwise
38 provided by law. This article shall not apply to any action undertaken
39 by any federal agency or federal department in fulfillment of its obli-
40 gations or duties pursuant to any federal law, federal regulation,
41 federal agency policy, or federal management activity relating to wild-
42 life, game or nongame species management, habitat protection, or migra-
43 tory species protection.

44 § 59-0123. Effect on other laws.

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

47 1. the police powers, local planning powers, zoning powers or authori-
48 ty to regulate land uses by villages and towns within the Great Swamp
49 reserve; or

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

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

54 § 59-0125. Judicial review.

55 Any person aggrieved by a final determination by any governing body
56 acting under this article, may within thirty days from the date of such

1 determination seek judicial review pursuant to article seventy-eight of
2 the civil practice law and rules in the supreme court. The commission
3 shall be a party to any such proceeding. In the event that the court
4 finds that the determination of such governing body constitutes the
5 equivalent of taking without just compensation, the commission may set
6 aside the determination of such governing body, or if the land so regu-
7 lated otherwise meets the goals and objectives of this article and if
8 the commission or the governing body has sufficient funds therefor, the
9 commission or the governing body may acquire such land or interest in
10 lands as have been taken, proceeding under the power of eminent domain.
11 All issues in any proceeding under the power of eminent domain shall
12 have preference over all other civil actions or proceedings.

13 § 59-0127. Severability.

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

18 § 2. This act shall take effect immediately.