STATE OF NEW YORK

5186--A

Cal. No. 511

2023-2024 Regular Sessions

IN SENATE

February 27, 2023

Introduced by Sens. MAYER, GOUNARDES, MAY, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law, in relation to requiring the department of environmental conservation to implement permit regulations and guidance regarding shoreline management

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

Section 1. Section 1-0303 of the environmental conservation law is amended by adding a new subdivision 26 to read as follows:

26. "Nature-based solution" shall mean a project that utilizes or mimics nature or natural processes and functions and that may also offer environmental, economic, and social benefits, while increasing resilience. Nature-based solutions include both green and natural infrastructure.

§ 2. Section 3-0301 of the environmental conservation law is amended by adding a new subdivision 2-a to read as follows:

2-a. a. To further assist in carrying out the policy of this state as provided in section 1-0101 of this chapter, the department, by and through the commissioner shall:

(1) authorize and encourage the use of nature-based solutions as the preferred alternative, where appropriate, for stabilizing tidal shorelines in the state when promulgating and implementing rules and regulations relating thereto, specifically including, but not limited to, those promulgated and implemented for articles fifteen, twenty-five and thirty-four of this chapter. The department shall consult with the

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

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United States army corps of engineers to ensure the minimization of conflicts with federal law and regulation.

(2) continue developing integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. Such guidance shall:

(i) communicate to stakeholders and regulatory authorities that it is the policy of the state that some shorelines shall remain natural unless stabilization is necessary, and when stabilization is deemed necessary, it shall support nature-based solutions as the preferred alternative for stabilizing tidal shorelines;

(ii) identify preferred shoreline management approaches for the shoreline and community types found in the state;

(iii) explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

(iv) recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

(3) give preference to a permit application for a shoreline management project based on nature-based solution design unless an alternative analysis containing a review of nature-based solutions that have been evaluated using the best available information shows that such approaches are not suitable. If this analysis shows that a nature-based solution approach is unsuitable or inconsistent with land-use regulations, the department shall require the applicant to incorporate, to the maximum extent possible, elements of a nature-based solution that are suitable for the project where appropriate.

b. (1) For the purposes of this subdivision, "nature-based solution" shall have the same meaning as defined in subdivision twenty-six of section 1-0303 of this chapter and shall specifically mean techniques applied within the tidal zone that incorporate natural, native living features.

(2) When considering a nature-based solution the department should prioritize techniques, including but not limited to those that:

(i) control or reduce shoreline erosion while maintaining benefits comparable to the natural shoreline including, but not limited to, allowing for natural sediment movement;

(ii) improve, restore, or maintain the connection between the upland and water habitats; and

(iii) incorporate habitat enhancement and natural elements, including but not limited to native re-vegetation or establishment of new vegetation consistent with a natural shoreline typical of the current site location either:

(A) under current conditions, or

(B) as adjusted for science-based state sea-level rise projections, utilizing the appropriate projection scenario at a time interval appropriate for the anticipated lifespan of the project but not less than twenty years after the anticipated project completion, pursuant to section 3-0319 of this title for such location.

§ 3. This act shall take effect immediately.