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SPONSOR: Sen. McBride & Rep. Heffernan & Rep. Q. Johnson
Sens. McDowell, Poore; Reps. J. Johnson

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 78
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO NON-TIDAL WETLANDS.

WHEREAS, Delaware's wetlands provide critical function and value, including reducing flood damage by capturing, slowing, and holding water; helping purify the state's waters; contributing to groundwater supplies; providing critical habitat for fish and wildlife species; and supporting economic development related to waterfowl hunting, bird watching, and other outdoor recreation; and

WHEREAS, conserving and restoring wetlands will reduce Delaware's vulnerability to inland flooding from intense precipitation and extreme storms, reduce future capital expenditures on water quality, and help grow Delaware's tourism economy; and

WHEREAS, twenty-five (25) states, including all of the Mid-Atlantic States except Delaware, have adopted state programs to conserve and restore non-tidal wetlands; and

WHEREAS, existing state and federal preservation and restoration programs have failed to prevent the loss of more than three thousand acres of non-tidal wetlands during the past twenty years, contributing to increased flood damage and adversely affecting landowners' safety, welfare and personal property.

WHEREAS, the Federal budget reductions and staffing constraints have reduced the capacity of the U.S. Army Corps of Engineers to deliver timely and accurate permit decisions on projects impacting non-tidal wetlands upon which they have jurisdiction; and

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 7 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

CHAPTER 66A. Non-Tidal Wetland Standards

§6601A. Purpose.

It is the purpose of this Chapter to promote public health, safety, and general welfare through the conservation and restoration of non-tidal wetlands, which provide significant public value and critical ecological functions through the mitigation and prevention of flood damage, provision of wildlife habitat, removal of pollutants from water resources, and reduction in costs for governments, residents, and businesses that result when wetlands are degraded.

§ 6602A. Definitions.

The following words, terms and phrases, when used in this Subchapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

“Department” shall mean the Department of Natural Resources and Environmental Control.

“Secretary” shall mean the Secretary of the Department of Natural Resources and Environmental Control.

§6603A Wetlands Advisory Committee.

The Secretary shall, within 18 months of the effective date of this legislation and through consultation with a Wetland Advisory Committee (Committee) established under this section, develop wetland protection priorities for the State of Delaware and recommend for consideration by the General Assembly a comprehensive approach for improving non-tidal wetland conservation, restoration, and education within the state.

The Committee shall consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented in the way of incentive programs, policies, and assumption of regulatory roles. The Committee shall also evaluate the permitting process for activities regulated by state and federal agencies with the goals of reducing duplication, providing efficient one-stop permitting, and improving the state’s ability to account accurately for cumulative and individual impacts.

The Committee shall consist of the following members:

1. One (1) member of the Delaware Farm Bureau appointed by the President of the Delaware Farm Bureau;
2. One (1) representative of the Delaware State Bar Association Real and Personal Property Section, appointed by the President of the Delaware State Bar Association;
3. One (1) representative of the Delaware Association of Realtors, appointed by the President of the Delaware Association of Realtors;

4. One (1) representative from the U.S. Army Corps of Engineers Philadelphia District Regulatory Branch;
5. One (1) representative of the Home Builders Association of Delaware appointed by the President of the Home Builders Association of Delaware.
6. One (1) representative of the Delaware League of Local Governments from each county, appointed by the President of the Delaware League of Local Governments from each county.
7. One (1) representative of the Committee of 100 appointed by the President of the Committee of 100.
8. Two (2) representatives of Delaware environmental organizations selected by the Secretary.
9. Two (2) representatives from outdoor recreation and wildlife conservation organizations selected by the Secretary
10. One (1) representative of the Delaware Department of Transportation appointed by the Secretary of the Department of Transportation.
11. One (1) representative of the Delaware Department of Agriculture appointed by the Secretary of Agriculture.
12. One (1) representative of the Delaware Forestry Association.
13. One (1) representative of each of the three County government planning agencies, as an employee of these agencies.
14. One (1) representative of Delaware Chapter of the American Council of Engineering Companies (ACEC).
15. Two (2) representatives of the Department of Natural Resources and Environmental Control appointed by the Secretary.
16. Two (2) members of the Delaware Senate appointed by the President Pro Tempore and two (2) members of the Delaware House of Representatives, appointed by the Speaker of the House, one (1) from each major political party of each governing body.
17. One (1) representative of the U.S. Department of Agriculture Farm Service Agency appointed by the State Executive Director.
18. One (1) representative of the U.S. Department of Agriculture Natural Resources Conservation Service appointed by the State Conservationist.

The Chair of the Committee shall be selected by the Secretary. The Committee shall organize and hold its first meeting no more than 60 days following the effective date of this legislation and shall be staffed by DNREC.

DNREC shall compile the results of the Committee recommendations, develop a draft report, and reconvene the Committee to review the draft report and solicit feedback before finalizing the report of recommendations. The Secretary

shall deliver an interim report of the work of the Committee to the General Assembly no later than May 1, 2014 and deliver the final report of recommendations no later than December 31, 2014.

Section 2. Amend Chapter 66, Title 7 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§6607 Procedures; regulations; application fees.

(g) The Secretary may issue an after-the-fact permit, letter of authorization or waiver in those cases where an activity has occurred without first obtaining the required permit, letter of authorization or waiver. The determination of whether or not to issue an after-the-fact permit, letter of authorization or waiver shall be consistent with the purposes and provisions this Chapter. The applicant receiving the after-the-fact permit, letter of authorization, or waiver will be responsible for paying any associated processing fee and the Secretary may assess a penalty in accordance with 7 Del. C. §6005.

Section 3. Amend Chapter 66, Title 7 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 6617. Penalties.

(a) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6604 of this title, or any order of the Secretary, shall be subject to enforcement under 7 Del. C. 6005. Any person who intentionally or knowingly violates any rule, regulation, order, permit condition or provision of this chapter shall be fined not less than \$500 or more than \$10,000 for each offense. Continuance of any activity prohibited by this chapter during any part of a day shall constitute a separate offense. Any person found guilty of violating any cease and desist order of the Secretary shall be fined for each offense, starting from the date of receipt of the order. The Superior Court shall have jurisdiction of offenses under this subsection.

(b) Any person who violates any rule, regulation, order, permit condition or provision of this chapter shall be fined not less than \$50 or more than \$500 for each violation. Each day of violation shall be considered as a separate violation. The Justices of the Peace Courts shall have jurisdiction of offenses under this subsection.

(c) Any person who violates a provision of this chapter, any condition or limitation in a permit rule, regulation or order shall be liable for a civil penalty of not less than \$1,000 nor more than \$10,000 for each completed violation. The Superior Court shall have jurisdiction of offenses under this subsection.

(d) In addition to any penalties imposed under this section or injunctive relief under § 6615 of this title, a person who effects or permits any activity in wetlands in violation of this chapter may be liable to the State for the cost of

~~restoration of the affected wetland to its condition prior to such violation insofar as that is technically feasible. The Attorney General of the State, upon complaint of the Secretary, shall institute a civil action to recover such damages, or may request such cost of restoration to be imposed in the Chancery Court injunctive action or Superior Court civil action.~~

Section 3. Amend Chapter 72, Title 7 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§7205 Permits required.

(d) The Secretary may issue an after-the-fact permit, lease, letter of approval or waiver in those cases where an activity has occurred without first obtaining the required permit, lease, letter of approval or waiver. The determination of whether or not to issue an after-the-fact permit, lease, letter of approval or waiver shall be consistent with the purposes and provisions this Chapter. The applicant receiving the after-the-fact permit, lease, letter of approval, or waiver will be responsible for paying any associated processing fee and lease fee and the Secretary may assess a penalty in accordance with 7 Del. C. 6005.

§ 7214. Violations; enforcement; civil and criminal penalties.

(a) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to §7205 of this title, or any order of the Secretary, shall be subject to enforcement under 7 Del. C. §6005. The Secretary shall enforce this chapter.

~~(b) Whoever violates this chapter, or any rule, regulation or condition of a lease or permit issued pursuant to authority granted in this chapter, or an order of the Secretary, shall be punishable as follows:~~

~~(1) If the violation has been completed, by a civil penalty of not less than \$1,000 nor more than \$10,000 for each completed violation. Each day of continued violation shall be considered as a separate violation. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought.~~

~~(2) If the violation is continuing or threatening to begin, the Secretary may, in addition to seeking a monetary penalty as provided in paragraph (b)(1) of this section, seek a temporary restraining order, a temporary injunction or permanent injunction in the Court of Chancery.~~

~~(c) Whoever violates this chapter, or any rule or regulation promulgated thereunder, or any rule or regulation in effect at the time of the enactment of this chapter or any lease or permit condition, or any order of the Secretary, shall be punishable by a criminal penalty of not less than \$50 nor more than \$500 for each violation. Each day of violation shall be considered as a separate violation. The Courts of the Justice of the Peace shall have jurisdiction of offenses under this subsection.~~

~~(d) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any lease or permit, rule, regulation or order issued under this chapter, who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall, upon conviction, be punished by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than 6 months, or both. The Superior Court shall have jurisdiction of offenses under this subsection.~~