



S.8008 / A.9008 (Budget), Part QQ

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BILL S.8008 / A.9008 (Budget), Part QQ
SUBJECT Freshwater Wetlands Mapping
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OPPOSE

The Business Council of New York State opposes Part QQ of the Transportation and Economic Development section of the FY 2023 Executive Budget, which proposes to remove the requirement that the Department of Environmental Conservation (DEC) develop and maintain freshwater wetland maps. The Business Council supports efforts to update New York’s wetlands statute, but in a way that would recognize the needs of landowners, in addition to assuring protection for valuable ecological resources. However, simply eliminating the current mapping requirements, and the corresponding right for the public to be notified and make substantive contributions to the process, is not a step in the right direction. At minimum, this proposal would create significant uncertainty for residential and commercial property owners and developers by eliminating the determinative effect of wetland maps. It will also impose additional uncertainty and administrative burdens on state regulators who would be tasked with determining on a case-by-case basis what is or is not a protected wetland.

Policy makers should first recognize that there are currently myriad protections afforded wetlands, streams, and water quality. If modifications are made to New York’s wetland laws, they should begin by attempting to provide clarity to the current muddled regulatory approach.

Background

Wetlands are protected under both federal and state law. Under the federal Clean Water Act, wetlands are regulated and protected by the Army Corps of Engineers whereas in New York, wetlands are regulated under Article 24 of the Environmental Conservation Law (ECL). Under Article 24, the Department of Environmental Conservation (DEC) is broadly authorized to regulate wetlands larger than 12.4 acres (5 hectares in size), and certain wetlands under that threshold if they are considered to be of unusual local importance.

Municipalities in New York are allowed to enact local laws governing wetlands

within their jurisdiction provided any such local program is “at least as protective of freshwater wetlands” as the state regulatory threshold. New York regulates a broader scope of activities than under the federal program, including drainage, dredging, excavation, removal of soil, filling, erecting structures, and polluting.

Under Article 24, DEC must develop and maintain maps of all regulated wetlands within the state. The existing process provides current landowners and future property owners with notice and a process to evaluate the effects that such delineations will have on the market value of a specific property. Upon request, DEC will refine approximate boundaries for landowners when they need more precise information. Under current state law, the modification of a wetland, or the 100-foot buffer strip surrounding them, requires a permit from DEC.

Importantly, the mapping process includes classifications of various wetlands, from Class I (which provide the most benefits) to Class IV (which provide the fewest), each necessitating unique criteria necessary to receive a modification permit. The classifications are subject to public review and comment. Thus, removing the mapping requirement stymies the opportunity for the public to review a wetland’s specific classification and file an appropriate modification permit application. Further, the existing process provides current landowners and future property owners with notice and a process to evaluate the effects that the delineation of a wetland will have on the market value of a specific property.

The Business Council is not opposed to updating New York’s wetlands statute. However, it should be done in a way that recognizes the current protections that are afforded wetlands by state and federal laws, regulations, and guidance, and the need to provide regulatory certainty to property owners; not through adding ambiguity by requiring regulators to determine, on a case-by-case basis, what is or is not a wetland in New York State.

We do not support the dramatic change proposed in the Executive Budget and we urge the Legislature to exclude Part QQ from the final budget agreement.