Memorandum of Support

A.9765 Englebright

Title: An act to amend the environmental conservation law, in relation to enforcement of the freshwater wetland law

Purpose: To expand the protection of freshwater wetlands by conforming enforcement provisions to those applicable to tidal wetlands.

Summary: The bill would amend section 71-2303 of the Environmental Conservation law to strengthen enforcement provisions for violations related to freshwater wetlands as follows:

• Increase to $10,000 the civil penalty for violation of provisions for the protection of freshwater wetlands, and make each day's continuation of the violation a separate violation
• Specify the conditions under which the Commissioner of Environmental Conservation may issue a cease-and-desist order, and provide for immediate administrative review of such an order;
• Require that a violator may be directed to restore the area adjacent to the freshwater wetland as well as the wetland itself;
• Increase the fine for a criminal violation to $5,000 for the first offense and $10,000 for each subsequent offense.

Justification:
The buffer areas surrounding wetlands are almost as important ecologically and hydrologically as the aquatic habits that they support. Disturbance of areas adjacent to wetlands can compromise important wetland function; whether it is flood prevention, clean water filtration, groundwater recharge, or critical wildlife habitat. This notion of buffer protection is codified in Article 25 of the ECL in relation to tidal wetlands and should be applied to freshwater wetlands where the need is just as great.

The Sierra Club Atlantic Chapter believes that it is essential for DEC to have authority to direct violators of wetland laws to restore disturbed adjacent areas as well as the affected wetland itself, whether it is freshwater or tidal, and that increased penalties are warranted in consideration of the true costs involved in lost wetland services. The Department of Environmental Conservation has seen its workforce severely reduced and funding slashed in recent years. It is appropriate to require polluters of NY’s waterways to contribute at least their financial share of the costs of clean up and regulation. We strongly urge your support of this important legislation.

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