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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO AGRICULTURE AND FORESTRY - AGRICULTURE FUNCTIONS OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Senators Lynch, Sosnowski, Walaska, and Miller

Date Introduced: March 19, 2015

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 2-1-18, 2-1-19, 2-1-20, 2-1-20.1, 2-1-20.2, 2-1-21, 2-1-22, 2-1-23,
2 2-1-24 and 2-1-25 of the General Laws in Chapter 2-1 entitled "Agricultural Functions of
3 Department of Environmental Management" are hereby amended to read as follows:

4 **2-1-18. Declaration of intent.** -- Whereas it is recognized that ~~swamps, marshes and~~
5 ~~other fresh-water~~ freshwater wetlands, buffers, floodplains and other areas that may be subject to
6 storm flows and flooding as defined in this chapter ~~act as buffers zones and provide storage and~~
7 absorption areas for flood waters which reduce flood hazards; and

8 Whereas all flood plains for all rivers, streams, and other water courses are certain to be
9 overflowed with water periodically in spite of all reasonable efforts to prevent those occurrences;
10 and

11 Whereas flood waters overflowing into ~~marshes, swamps, and other fresh-water~~
12 freshwater wetlands, buffers, floodplains, and other areas that may be subject to storm flows and
13 flooding are not only released more slowly downstream, thus reducing the damage they may
14 cause, but flood waters may tend to be absorbed into the ground water supply ~~through swamps,~~
15 ~~marshes, and other fresh-water wetlands, thus~~ further reducing the flood hazard and recharging
16 the vital ground water resource; and

17 Whereas precipitation patterns are known to be changing and Rhode Island has
18 experienced a higher frequency of intense storm events resulting in flooding; and

1 Whereas ~~swamps, marshes, and other fresh water~~ freshwater wetlands and buffers are
2 among the most valuable of all wildlife habitats and are high value recreational areas as well, and
3 wildlife and recreation are widely recognized as essential to the health, welfare, and general well
4 being of the general populace; and

5 Whereas it has been established through scientific study that activities conducted in lands
6 adjacent to freshwater wetlands can exert influence on their condition, functions, and values; and
7 subsequently these lands should be protected; and

8 Whereas it has been established through scientific study that maintaining lands adjacent
9 to freshwater wetlands as naturally vegetated buffers protects the functions and values of
10 wetlands and that such buffers in and of themselves perform vital ecological functions; and

11 Whereas it has been established through scientific study that freshwater wetlands and
12 buffers maintained in a natural condition can provide benefits to water quality through the
13 filtering and uptake of water pollutants, retention of sediment, stabilizing shorelines, and other
14 natural processes; and

15 Whereas ~~swamps, marshes, and other fresh water~~ freshwater wetlands, buffers, and
16 floodplains, are increasingly threatened by random and frequently undesirable projects for
17 drainage, excavation, filling, encroachment, or other ~~form~~ forms of disturbance or destruction,
18 and that a review of scientific literature indicates that aspects of existing state standards to protect
19 these areas need to be strengthened; ~~are currently inadequately protected from random and~~
20 undesirable projects; and

21 Whereas the protection of ~~swamps, marshes, and other fresh water~~ freshwater wetlands,
22 buffers, floodplains, and other areas that may be subject to storm flows and flooding from
23 random, unnecessary, and/or undesirable drainage, excavation, filling, encroachment, or any other
24 form of disturbance or destruction is recognized as being in the best public interest and essential
25 to the health, welfare, and general well being of the general populace and essential to the
26 protection of property and life during times of flood or other disaster affecting water levels or
27 water supply;

28 Whereas the lack of uniform standards results in duplication of reviews administered by
29 state and local governments and burdens businesses and property owners who require a
30 predictable regulatory environment to be successful; and

31 Whereas it is recognized that statewide regulatory standards to protect freshwater
32 wetlands, buffers, and floodplains are in the public interest, important to supporting economic
33 vitality, and necessary to ensure protection is achieved in a consistent manner; and

34 Therefore, the provisions of the following sections are intended to preserve freshwater

1 wetlands, buffers, and floodplains and regulate the use ~~of thereof~~ swamps, marshlands and other
2 ~~fresh water~~ freshwater wetlands through the establishment of jurisdictional areas and the
3 regulation of activities consistent with this chapter.

4 **2-1-19. Public policy on swamps, marshes, and fresh water wetlands.** ~~--- Public policy~~
5 **on freshwater wetlands.** -- It is the public policy of the state to preserve the purity and integrity
6 of the ~~swamps, marshes, and other fresh water~~ freshwater wetlands, buffers, and floodplains of
7 this state. The health, welfare, and general well being of the populace and the protection of life
8 and property require that the state restrict the uses of freshwater wetlands, buffers, and
9 floodplains and, in the exercise of the police power, ~~those wetlands are to be regulated~~ regulate
10 activities in jurisdictional areas and as otherwise provided for hereunder consistent with this
11 chapter.

12 **2-1-20. Definitions.** -- As used in this chapter;

13 (1) "Area subject to flooding" shall include, but not be limited to, low-lying areas that
14 collect, hold, or meter out storm and flood waters from any of the following: rivers, streams,
15 intermittent streams, or areas subject to storm flowage.

16 (2) "Area subject to storm flowage" includes drainage swales and channels that lead into,
17 out of, pass through, or connect other freshwater wetlands or coastal wetlands, and that carry
18 flows resulting from storm events, but may remain relatively dry at other times.

19 ~~(3)~~(3) "Bog" means a place where standing or slowly running water is near or at the
20 surface during normal growing season and/or where a vegetational community has over fifty
21 percent (50%) of the ground or water surface covered with sphagnum moss (Sphagnum) and/or
22 where the vegetational community is made up of one or more of, but not limited to nor
23 necessarily including all of, the following: blueberries, and cranberry (Vaccinium), leatherleaf
24 (Chamaedaphne calyculata), pitcher plant (Sarracenia purpurea), sundews (Droseraceae), orchids
25 (Orchidaceae), white cedar (Chamaecyparis thyoides), red maple (Acer rubrum), black spruce
26 (Picea mariana), bog aster (Aster nemoralis), larch (Laris laricina), bogrosemary (Andromeda
27 glaucophylla), azaleas (Rhododendron), laurels (Kalmia), sedges (Caryx), and bog ~~and~~ cotton
28 (Eriophorum).

29 (4) "Buffer" means an area of undeveloped vegetated land adjacent to a freshwater
30 wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a
31 naturally occurring vegetated area.

32 (5) "Department" means the department of environmental management (DEM).

33 ~~(6)~~(6) "Director" means the director of the department of environmental management or
34 his or her duly authorized agent or agents.

1 ~~(3)(7)~~ "Flood Plain Floodplain" means that land area adjacent to a river or stream or other
2 body of flowing water which is, on the average, likely to be covered with flood waters resulting
3 from a one hundred (100) year frequency storm. A "one hundred (100) year frequency storm" is
4 one that is to be expected to be equaled or exceeded once in one hundred (100) years; or may be
5 said to have a one percent (1%) probability of being equaled or exceeded in any given year.
6 ~~Rainfall intensity data for a one hundred (100) year frequency storm are those established for~~
7 ~~New England locations by the national weather service (formerly the U. S. weather bureau).~~

8 ~~(4)(8)~~ "Fresh-water Freshwater wetlands" includes but is not limited to, those areas that
9 are inundated or saturated by surface or groundwater at a frequency and duration to support, and
10 that under normal circumstances do support a prevalence of vegetation adapted for life in
11 saturated soil conditions. Freshwater wetlands includes, but is not limited to: marshes, swamps,
12 bogs, ~~ponds, rivers, river and stream flood plains and banks, areas subject to flooding or storm~~
13 ~~flowage~~, emergent and submergent plant communities, and for the purposes of this chapter rivers,
14 streams, ponds, and vernal pools ~~in any body of fresh water including rivers and streams and that~~
15 ~~area of land within fifty feet (50') of the edge of any bog, marsh, swamp or pond.~~

16 (9) "Jurisdictional area" means the following lands and waters, as defined herein except
17 as provided for in § 2-1-22(k), which shall be subject to regulation under this chapter:

- 18 (i) Freshwater wetlands;
- 19 (ii) Buffers;
- 20 (iii) Floodplains;
- 21 (iv) Areas subject to storm flowage;
- 22 (v) Areas subject to flooding; and
- 23 (vi) Contiguous areas that extend outward:
 - 24 (A) Two hundred feet (200') from the edge of a river or stream;
 - 25 (B) Two hundred feet (200') from the edge of a drinking water supply reservoir; and
 - 26 (C) One hundred feet (100') from the edge of all other freshwater wetlands.

27 ~~(5)(10)~~ "Marsh" means a place ~~not less than one acre in extent~~ wholly or partly within the
28 state where a vegetational community exists in standing or running water during the growing
29 season and/or is made up of one or more of, but not limited to nor necessarily including all of, the
30 following plants or groups of plants: hydrophytic reeds (Phragmites), grasses (Cramineae),
31 mannagrasses (Glyceria), cutgrasses (Leersia), pickerelwoods (Pontederiaceae), sedges
32 (Cyperaceae), rushes (Juncaceae), cattails (Typha), water plantains (Alismataceae), bur-reeds
33 (Sparganiaceae), pondweeds (Zosteraceae), frog's bits (Hydrocharitaceae), arums (Araceae),
34 duckweeds (Lemnaceae), water lilies (Nymphaeaceae), water-milfoils (Haloragaceae), water-

1 starworts (Callitricheae), bladder-worts (Utricularia), pipeworts (Eriocaulon), sweet gale
2 (Myrica gale), and buttonbush (Cephalanthus occidentalis).

3 ~~(6)~~(11) "Near or at the surface" mean within ~~thirty-six (36)~~ eighteen (18) inches of the
4 surface.

5 ~~(7)~~(12) "Pond" means a place ~~not less than one quarter (1/4) acre in extent,~~ natural or
6 man-made, wholly or partly within the state, where open standing or slowly moving water is
7 present for at least six (6) months a year.

8 ~~(8)~~(13) "River" means a body of water designated as a perennial stream by the United
9 States department of interior geologic survey on 7.5 minute series topographic maps and which is
10 not a pond as defined in this section.

11 (14) "Setback" means the minimum distance from the edge of a freshwater wetland at
12 which an approved activity or alteration may take place.

13 (15) "Stream" means any flowing body of water or watercourse that flows long enough
14 each year to develop and maintain a channel and that may carry groundwater discharge or surface
15 runoff.

16 ~~(9) "River bank" means that area of land within two hundred feet (200') of the edge of~~
17 ~~any flowing body of water having a width of ten feet (10') or more and that area of land within~~
18 ~~one hundred feet (100') of the edge of any flowing body of water having a width of less than ten~~
19 ~~feet (10') during normal flow.~~

20 ~~(10)~~(16) "Swamp" means a place ~~not less than three (3) acres in extent~~ wholly or partly
21 within the state where ground water is near or at the surface of the ground for a significant part of
22 the growing season or runoff water from surface drainage collects frequently and/or where a
23 vegetational community is made up of a significant portion of one or more of, but not limited to
24 nor necessarily including all of, the following: red maple (Acer rubum), elm (Ulmus americana),
25 black spruce (Picea mariana), white cedar (Chamaecyparis thyoides), ashes (Fraxinus), poison
26 sumac (Rhus vernix), larch (Larix laricina), spice bush (Lindera benzoin), alders (Alnus), skunk
27 cabbage (Symplocarpus foetidus), hellebore (Veratrum viride), hemlock (Thuja canadensis),
28 sphagnums (Sphagnum), azaleas (Rhododendron), black ~~adler~~ alder (Ilex verticillata), coast
29 pepperbush (Clethra alnifolia), marsh marigold (Caltha palustris), blueberries (Vaccinium),
30 buttonbush (Cephalanthus occidentalis), willow (Salicaceae), water willow (Decodon
31 verticillatus), tupelo (Nyssa sylvatica), laurels (Kalmia), swamp white oak (Quercus bicolor), or
32 species indicative of marsh.

33 (17) "Vernal pool" means a depressional wetland basin that typically goes dry in most
34 years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both

1 size and depth depending upon landscape position and parent materials. Vernal pools usually
2 support one or more of the following obligate indicator species: wood frog (*Lithobates*
3 *sylvaticus*), spotted salamander (*Ambystoma maculatum*), marbled salamander (*Ambystoma*
4 *opacum*), and fairy shrimp (*Eubrachipus* spp.) and typically preclude sustainable populations of
5 predatory fish.

6 **2-1-20.1. Rules and regulations.** – (a) The director is authorized to adopt, modify, or
7 repeal rules and regulations that are in accord with the purposes of §§ 2-1-18 -- ~~2-1-24~~ 2-1-27 and
8 are subject to the administrative procedures act, chapter 35 of title 42, except for those freshwater
9 wetlands located in the vicinity of the coast as set out in chapter 23 of title 46 of the general laws
10 which shall be regulated by the coastal resources management council consistent with the
11 provisions of chapter 23 of title 46 and §§ 2-1-18 through 2-1-20.1 and 2-1-27.

12 (b) The director is authorized to establish jurisdictional areas through regulation. The
13 rules and regulations promulgated pursuant to § 2-1-20.1 shall apply within the jurisdictional
14 areas defined in § 2-1-20 and subject to the provisions of § 2-1-22(k), and to activities as
15 provided for in § 2-1-21.

16 (c) Within twelve (12) months from enactment of this section, the department and the
17 coastal resources management council shall promulgate standards for freshwater wetland buffers
18 and setbacks into state rules and regulations pursuant to their respective authorities. The
19 department and the coastal resources management council shall collaborate to develop the state
20 standards for freshwater buffers and setbacks that will be incorporated into the programs of both
21 agencies. State regulations designating buffers shall include a procedure that allows a
22 municipality to petition the agency director with jurisdiction to increase the size of the buffer
23 within the designated jurisdictional area protecting one or more freshwater wetland resources.

24 (d) In developing standards specified in § 2-1-20.1(c), the department and the coastal
25 resources management council shall take into consideration agricultural and plant-based green
26 infrastructure practices and activities, while ensuring protection of the state's natural resources. In
27 setting criteria, the department shall take into account, at a minimum, existing land use, watershed
28 and wetland resource characteristics, and the type of activity including acceptable best
29 management practices. The director shall establish by appointment an advisory work group to
30 facilitate input on the development of criteria for freshwater wetland setbacks and buffers
31 applicable to agricultural activities and plant-based green infrastructure. The advisory group shall
32 include, at minimum, the following: one representative from the Rhode Island Farm Bureau, one
33 representative of the Rhode Island nursery and landscape association, one representative of the
34 DEM agricultural advisory committee, an operator of a small-scale agricultural enterprise, and

1 [one professional with expertise in soil and water conservation practices.](#)

2 ~~2-1-20.2. Designation of wetlands.~~ **Designation of wetlands, buffers, and**
3 **floodplains.** -- The director is authorized to determine which areas are to be known as [freshwater](#)
4 wetlands, ~~and to maintain map surveys of the state that indicates the wetland areas. Those map~~
5 ~~surveys shall be provided to each of the individual cities and towns, and copies of these map~~
6 ~~surveys shall be maintained as public records by the building inspector of each city and town~~
7 [buffers, and floodplains, areas subject to flooding, and areas subject to storm flowage.](#)

8 ~~2-1-20.3. Inspection -- Penalty.~~ (a) ~~The director is authorized to enter, examine or~~
9 ~~survey at any reasonable time any places that he or she considers necessary to carry out his or her~~
10 ~~responsibilities under §§ 2-1-18 -- 2-1-24 2-1-27 without a warrant.~~

11 ~~(b) Any person who willfully impedes or obstructs an inspection, examination or survey~~
12 ~~by the director or the director's agents shall upon conviction be punished by a fine not exceeding~~
13 ~~one hundred dollars (\$100) or by imprisonment not exceeding thirty (30) days or both.~~

14 **2-1-21. Approval of director.** -- (a) (1) No person, firm, industry, company, corporation,
15 city, town, municipal or state agency, fire district, club, nonprofit agency, or other individual or
16 group may:

17 (i) ~~excavate~~ [Excavate](#); drain; fill; place trash, garbage, sewage, highway runoff, drainage
18 ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon;
19 divert water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter
20 the character of any ~~fresh water~~ [freshwater](#) wetland, [buffer, or floodplain](#) as defined in section 2-
21 1-20 without first obtaining the approval of the director of the department of environmental
22 management; [or](#)

23 (ii) [Undertake any activity within a jurisdictional area, as defined in § 2-1-20, that may](#)
24 [alter the character of the freshwater wetland, buffer, or floodplain without first obtaining the](#)
25 [approval of the director of the department of environmental management.](#)

26 (2) Approval will be denied if in the opinion of the director granting of approval would
27 not be in the best public interest. ~~Approval shall not be granted if the city council or town council~~
28 ~~of the municipality within whose borders the project lies disapproves within the forty five (45)~~
29 ~~days provided for objections set forth in § 2-1-22. Disapproval does not preclude the director of~~
30 ~~the department of environmental management from granting an approval of alterations of~~
31 ~~wetlands relating to a state highway project proposed by the department of transportation that~~
32 ~~passes through or crosses two (2) or more municipalities.~~

33 (3) Appeal from a denial may be made to the superior court [following the exhaustion of](#)
34 [administrative appeals provided through the administrative adjudication division established by](#)

1 [chapter 17.7 of title 42.](#)

2 (4) In the event of any alteration by a city or town of surface water impoundments used
3 for drinking water supply, limited to maintenance within existing boundary perimeters of the
4 impoundment, no approval shall be required. The city or town advises the director at least twenty
5 (20) days prior to commencing the maintenance work. The city or town shall advise the director
6 in writing, describing the location and nature of the work, anticipated times of commencement
7 and completion, and methods to be used to reduce adverse impacts on the [freshwater](#) wetland,
8 [buffer, or floodplain](#). The director shall advise the city or town of any concerns with the impact of
9 the proposed maintenance on the [freshwater](#) wetland, [buffer, or floodplain](#) or ~~and~~ water quality.

10 (b) Whenever a landowner is denied approval to alter a [freshwater](#) wetland by the
11 director, ~~or by the city or town within whose borders the wetland lies~~ under subsection (a), the
12 landowner may elect to have the state, ~~or the city or town,~~ acquire the land involved by
13 petitioning to the superior court. If the court determines that the proposed alteration would not
14 essentially change the natural character of the land, would not be unsuited to the land in the
15 natural state, and would not injure the rights of others, the court shall, upon determining the fair
16 market value of the [freshwater](#) wetland, based upon its value as a [freshwater](#) wetland, direct the
17 state, if approval was denied by the director, ~~or the city or town, if approval was denied by the~~
18 ~~city or town, or both, if they concur in the disapproval,~~ to pay to the landowner the fair market
19 value of the [freshwater](#) wetland. If the state, ~~or the city or town, or both, where both are ordered~~
20 ~~to pay,~~ declines the acquisition, the landowner may proceed to alter the [freshwater](#) wetland as
21 initially requested. Any amount paid by the state shall be paid from any funds in the treasury not
22 otherwise appropriated. ~~If the director of environmental management alone denied approval under~~
23 ~~subsection (a), then the state shall make payment. If the city or town alone denied approval under~~
24 ~~subsection (a), then the city or town shall make payment. If both the state and the city or town~~
25 ~~denied approval, then payment shall be shared equally by the state and the city or town.~~

26 **2-1-22. Procedure for approval by director -- Notice of change of ownership --**
27 **Recordation of permit. --** (a) Application for approval of a project to the director of
28 environmental management shall be made in a form to be prescribed by the director and provided
29 by the director upon request. Prior to the application, a request may be made for preliminary
30 determination as to whether this chapter applies. A preliminary determination shall be made by
31 the director only after an on-site review of the project and the determination shall be made within
32 thirty (30) days of the request. This chapter shall be determined to apply if a significant alteration
33 appears to be contemplated and an application to alter a [freshwater](#) wetland, [buffer or floodplain](#)
34 will be required. Within fourteen (14) days after receipt of the completed application

1 accompanied by plans and drawings of the proposed project, the plans and drawings to be
2 prepared by the registered professional engineer to a scale of not less than one inch (1") to one
3 hundred feet (100'), the director shall notify all landowners whose properties are within two
4 hundred feet (200') of the proposed project and the director will also notify the city or town
5 council, the conservation commission, the planning board, the zoning board, and any other
6 individuals and agencies in any city or town within whose borders the project lies who may have
7 reason in the opinion of the director to be concerned with the proposal. The director may also
8 establish a mailing list of all interested persons and agencies who may wish to be notified of all
9 applications.

10 (b) If the director receives any objection to the project within forty-five (45) days of the
11 mailing of the notice of application from his or her office, the objection to be in writing and of a
12 substantive nature, the director shall then schedule a public hearing in an appropriate place as
13 convenient as reasonably possible to the site of the proposed project. The director shall inform by
14 registered mail all objectors of the date, time, place, and subject of the hearing to be held. The
15 director shall further publish notice of the time, place, date, and subject of the hearing in one local
16 newspaper circulated in the area of the project and one statewide newspaper, the notices to appear
17 once per week for at least two (2) consecutive weeks prior to the week during which the hearing
18 is scheduled. The director shall establish a reasonable fee to cover the costs of ~~the investigations~~
19 [the investigations](#), notifications, and publications, and hearing and the applicant shall be liable for
20 the fee.

21 (c) If no public hearing is required, or following a public hearing, the director shall make
22 his or her decision on the application and notify the applicant by registered mail and the
23 applicant's attorney and any other agent or representative of the applicant by mail of this decision
24 within a period of six (6) weeks. If a public hearing was held, any persons who objected, in
25 writing, during the forty-five (45) day period provided for objections shall be notified of the
26 director's decision by first class mail.

27 (d) In the event of a decision in favor of granting an application, the director shall issue a
28 permit for the applicant to proceed with the project, and shall require the applicant to pay a permit
29 fee of one hundred dollars (\$100). The permit may be issued upon any terms and conditions,
30 including time for completion, that the director may require. Permits shall be valid for a period of
31 one year from the date of issue and shall expire at the end of that time unless renewed. A permit
32 may be renewed for up to three (3) additional one year periods upon application by the original
33 permit holder or a subsequent transferee of the property subject to permit, unless the original
34 permit holder or transferee has failed to abide by the terms and conditions of the original permit

1 or any prior renewal. The director may require new hearings if, in his or her judgment, the
2 original intent of the permit is altered or extended by the renewal application or if the applicant
3 has failed to abide by the terms of the original permit in any way. In addition, in the event a
4 project authorized by a permit was not implemented by the permit holder or transferee because
5 approval of the project by a federal agency, for which application had been timely made, had not
6 been received or a federal agency had stopped the project from proceeding, prior to the expiration
7 of the permit, the permit holder or transferee may apply for a renewal of the permit at any time
8 prior to the tenth (10th) anniversary of the original issuance, and the application shall be deemed
9 to be an insignificant alteration subject to expedited treatment. The request for renewal of a
10 permit shall be made according to any procedures and form that the director may require.

11 (e) The original permittee or subsequent transferee shall notify the director, in writing, of
12 any change of ownership that occurs while an original or renewal permit is in effect by
13 forwarding a certified copy of the deed of transfer of the property subject to the permit to the
14 director.

15 (f) A notice of permit and a notice of completion of work subject to permit shall be
16 eligible for recordation under chapter 13 of title 34 and shall be recorded at the expense of the
17 applicant in the land evidence records of the city or town where the property subject to permit is
18 located, and any subsequent transferee of the property shall be responsible for complying with the
19 terms and conditions of the permit.

20 (g) The director shall notify the person requesting a preliminary determination and the
21 person's attorney, agent, and other representative of his or her decision by letter, copies of which
22 shall be sent by mail to the city or town clerk, the zoning board, the planning board, the building
23 official, and the conservation commission in the city or town within which the project lies.

24 (h) The director shall report to the general assembly on or before February 1 of each
25 calendar year on his or her compliance with the time provisions contained in this chapter.

26 (i) Normal farming activities shall be considered insignificant alterations and, as normal
27 farming activities, shall be exempted from the provisions of this chapter in accordance with the
28 following procedures:

29 (1) Normal farming and ranching activities are those carried out by farmers as defined in
30 this title, including plowing, seeding, cultivating, land clearing for routine agriculture purposes,
31 harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes,
32 upland soil and water conservation practices, and maintenance of existing farm drainage
33 structures, existing farm ponds and existing farm roads are permissible at the discretion of
34 farmers in accordance with best farm management practices which assure that the adverse effects

1 to the flow and circulation patterns and chemical and biological characteristics of ~~fresh-water~~
2 [freshwater](#) wetlands are minimized and that any adverse effects on the aquatic environment are
3 minimized.

4 (2) In the case of construction of new farm ponds, construction of new drainage
5 structures and construction of new farm roads, the division of agriculture shall be notified by the
6 filing of a written application for the proposed construction by the property owner. The
7 application shall include a description of the proposed construction and the date upon which
8 construction is scheduled to begin, which date shall be no earlier than thirty (30) calendar days
9 after the date of the filing of the application. The division of agriculture shall review such
10 applications to determine that they are submitted for agricultural purposes and to assure that
11 adverse effects to the flow and circulation patterns and chemical and biological characteristics of
12 ~~fresh-water~~ [freshwater](#) wetlands are minimized and that any adverse effects on the aquatic
13 environment are minimized and will not result in a significant alteration to the [freshwater](#)
14 wetlands. Pursuant to this review, the division shall notify the applicant, in writing, whether the
15 proposal is an insignificant alteration. This notice shall be issued not later than thirty (30) days
16 after the date that the application was filed with the division. In the event notice is given by the
17 division as required, the application shall be conclusively presumed to be an insignificant
18 alteration. If no notice is given as required, or if an application is approved as an insignificant
19 alteration, the applicant may cause construction to be done in accordance with the application,
20 and neither the applicant nor the applicant's agents or employees who cause or perform the
21 construction in accordance with the application shall be liable for any criminal, civil,
22 administrative or other fine, fee, or penalty, including restoration costs for violations alleged to
23 arise from the construction.

24 (3) The division of agriculture shall, in coordination with the agricultural council's
25 advisory committee, adopt regulations for subdivision (i)(2), and shall determine whether a
26 proposed activity, other than an activity listed in subdivision (i)(1), constitutes a normal farming
27 activity, or involves the best farm management practices. In making such a determination, the
28 division of agriculture shall consider the proposed activity on a case-by-case basis, relative to the
29 characteristics of the particular jurisdictional area in which the activity is proposed, and shall
30 consider whether the activity incorporates best farm management practices and assures that
31 adverse effects to the flow and circulation patterns and chemical and biological characteristics of
32 freshwater wetlands, buffers, and floodplains are minimized and that any adverse effects on the
33 aquatic environment are minimized in each instance.

34 (4) Except as otherwise provided for farm road construction, filling of [freshwater](#)

1 wetlands conforms to the provisions of this chapter.

2 (j) For the purposes of this section, a "farmer" is an individual, partnership or
3 corporation who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the
4 Internal Revenue Service, has a state farm tax number and has earned ten thousand dollars
5 (\$10,000) gross income on farm products in each of the preceding four (4) years.

6 (k) For the purposes of this section as applicable to normal farming and ranching
7 activities specified in §§ 2-1-22(i)(1) and (i)(2) above, freshwater wetlands shall be defined as:
8 freshwater wetlands, floodplains, areas subject to storm flowage, areas subject to flooding as
9 defined in § 2-1-20 and the land area within two hundred feet (200') of a flowing body of water
10 having a width of ten feet (10') or more during normal flow, the area of land within one hundred
11 feet (100') of a flowing body of water having a width of less than ten feet (10') during normal
12 flow and the area of land within fifty feet (50') of a bog, marsh of one acre or greater, swamp of
13 three (3) acres or greater and pond not less than one quarter (1/4) acre in extent. These areas shall
14 also serve as the jurisdictional area.

15 **2-1-23. Violations. --** In the event of a violation of § 2-1-21, the director of
16 environmental management has the power to order complete restoration of the ~~fresh-water~~
17 freshwater wetland, buffer, floodplain or other jurisdictional area involved by the person or agent
18 responsible for the violation. If the responsible person or agent does not complete the restoration
19 within a reasonable time following the order of the director of the department of environmental
20 management, the director has the authority to order the work done by an agent of the director's
21 choosing and the person or agent responsible for the original violation is liable for the cost of the
22 restoration. The violator is liable for a fine not exceeding five thousand dollars (\$5,000) for each
23 violation, except that if the violator knowingly or recklessly alters a ~~fresh-water~~ freshwater
24 wetland, buffer, floodplain or other jurisdictional area without a permit or approval from the
25 director, knowingly or recklessly alters a ~~fresh-water~~ freshwater wetland, buffer, floodplain or
26 other jurisdictional area in violation of the rules or regulations promulgated by the director, or
27 alters a ~~fresh-water~~ freshwater wetland, buffer, floodplain or other jurisdictional area in violation
28 of a permit issued by the director, then the violator is liable for a fine not exceeding ten thousand
29 dollars (\$10,000) for each violation.

30 **2-1-24. Notice to cease operation and relief in equity -- Penalty. --** (a) Whenever any
31 person, firm, industry, company, corporation, city, town, municipal or state agency, fire, district,
32 club or other individual or group commences any activity set forth in § 2-1-21 without first
33 having obtained the approval of the director, or violates any rule or regulation of the director, the
34 director has the power by written notice to order the violator to cease and desist immediately

1 and/or restore the [freshwater wetlands, buffers, floodplains or other jurisdictional areas](#) to their
2 original state insofar as possible. Any order or notice to restore [freshwater wetlands, buffers,](#)
3 [floodplains or other jurisdictional area](#) is eligible for recordation under chapter 13 of title 34 and
4 shall be recorded in the land evidence records in the city or town where the [property](#) subject
5 ~~wetland~~ [to the notice](#) is located, and any subsequent transferee of the ~~wetland~~ [property](#) is
6 responsible for complying with the requirements of the order or notice. If the violator and/or
7 subsequent transferee is ordered to restore the [freshwater wetlands, buffer, floodplain or other](#)
8 [jurisdictional area](#) to the original state, and the violator and/or subsequent transferee does not
9 complete the restoration within a reasonable time following the order of the director, the director
10 has the authority to order the work done by an agent of the director's choosing, and the person,
11 agent or subsequent transferee is liable for the cost of the restoration. If the violator and/or
12 subsequent transferee does not conform to the director's order, the director may bring prosecution
13 by complaint and warrant and the prosecution shall be made in the district court of the state. The
14 director, without being required to enter into any recognizance or to give surety for cost, may
15 institute the proceedings in the name of the state. It is the duty of the attorney general to conduct
16 the prosecution of all proceedings brought by the director.

17 (b) The director may obtain relief in equity or by prerogative writ whenever relief is
18 necessary for the proper performance of duties under §§ 2-1-18 -- ~~2-1-24~~ [2-1-27](#).

19 (c) Any person who violates an order of the director shall be punished by a fine not
20 exceeding five hundred dollars (\$500) or by imprisonment not exceeding thirty (30) days or by
21 both, and every person is deemed guilty of a separate and distinct offense for each day during
22 which the violation is repeated or continued.

23 ~~(d) For the purposes of this section, the building inspector of the city of Warwick or~~
24 ~~town of Warren is deemed the authorized agent of the director and is vested with all the duties,~~
25 ~~powers and authority granted by this section to the director of environmental management to be~~
26 ~~exercised solely with respect to projects or property within his or her respective city or town. It~~
27 ~~shall be the duty of the attorney general of the state to conduct the prosecution of all proceedings~~
28 ~~brought by the building inspector in accordance with this section. Nothing contained in this~~
29 ~~section is deemed to divest the director of environmental management of any duty, power or~~
30 ~~authority granted by this chapter.~~

31 **2-1-25. Severability.** -- If any provision of §§ 2-1-20 -- ~~2-1-25~~ [2-1-28](#) or of any rule,
32 regulation, or determination made under these sections, or the application of these sections to any
33 person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the
34 remainder of §§ 2-1-20 -- ~~2-1-25~~ [2-1-28](#), or the rule, regulation, or determination, and the

1 application of those provisions to other persons, agencies, or circumstances shall not be affected.
2 The invalidity of any section or sections or parts of any section or sections of §§ 2-1-20 -- ~~2-1-25~~
3 2-1-28 shall not affect the validity of the remainder of §§ 2-1-20 -- ~~2-1-25~~ 2-1-28.

4 SECTION 2. Chapter 2-1 of the General Laws entitled "Agricultural Functions of
5 Department of Environmental Management" is hereby amended by adding thereto the following
6 sections:

7 **2-1-27. Access to information on freshwater wetland applications.** -- The directors of
8 the department and the coastal resources management council shall establish procedures that will
9 provide municipalities and the public with access to information concerning freshwater wetland
10 permit applications filed with the state. Procedures shall be designed to facilitate municipal input
11 during the permit application review process and shall, to the extent feasible, utilize information
12 technology to automate making information available in a timely manner. Procedures to facilitate
13 local input shall be established and implemented in a manner that avoids introducing delay in
14 issuance of permit decisions.

15 **2-1-28. Effect on zoning ordinances.** -- Local zoning ordinances and regulations that are
16 inconsistent with this chapter shall be amended to conform to the requirements of § 45-24-30.

17 SECTION 3. Sections 45-24-29, 45-24-30 and 45-24-33 of the General Laws in Chapter
18 45-24 entitled "Zoning Ordinances" are hereby amended to read as follows:

19 **45-24-29. Legislative findings and intent.** -- (a) (1) The general assembly recognizes
20 and affirms in §§ 45-24-27 through 45-24-72 that the findings and goals stated in § 45-22.2-3
21 present findings and goals with which zoning must be consistent.

22 (2) The general assembly further finds that:

23 (i) The zoning enabling statutes contained in §§ 45-24-1 through 45-24-26, repealed as
24 of December 31, 1994, were largely enacted in 1921;

25 (ii) The character of land development and related public and private services have
26 changed substantially in the intervening years;

27 (iii) It is necessary to provide for innovative land development practices to enable cities
28 and towns to adequately regulate the use of land and employ modern land development practices;

29 (iv) It is necessary to take full account of the requirement that each city and town amend
30 its zoning ordinance to conform to and be consistent with its comprehensive plan adopted
31 pursuant to chapter 22.2 of this title, and to all the elements contained therein; and

32 (v) A substantial updating and revision of the original statutory zoning enabling
33 authority is required to meet these changed conditions.

34 (3) It is therefore found that the preparation and implementation of zoning ordinances is

1 necessary to address the findings and needs identified in this section; to protect the public health,
2 safety, and general welfare; to allow the general assembly to carry out its duty to provide for the
3 conservation of the natural resources of the state and to adopt all means necessary and proper by
4 law for the preservation, regeneration, and restoration of the natural environment of the state in
5 accordance with R.I. Const., art. 1, §§ 16 and 17; to promote good planning practice; and to
6 provide for sustainable economic growth in the state.

7 (b) Therefore, it is the intent of the general assembly:

8 (1) That the zoning enabling authority contained in this chapter provide all cities and
9 towns with adequate opportunity to address current and future community and statewide needs;

10 (2) That the zoning enabling authority contained in this chapter require each city and
11 town to conform its zoning ordinance and zoning map to be consistent with its comprehensive
12 plan developed pursuant to chapter 22.2 of this title;

13 (3) ~~That~~ [Except as prohibited pursuant to §§ 45-24-30\(b\), 45-24-30\(c\), or 45-24-30\(d\)](#)
14 [that](#) the zoning enabling authority contained in this chapter empower each city and town with the
15 capability to establish and enforce standards and procedures for the proper management and
16 protection of land, air, and water as natural resources, and to employ contemporary concepts,
17 methods, and criteria in regulating the type, intensity, and arrangement of land uses, and provides
18 authority to employ new concepts as they may become available and feasible;

19 (4) That the zoning enabling authority contained in this chapter permit each city and
20 town to establish an economic impact commission whose duties would be to advise
21 municipalities on the economic impact new zoning changes would have on cities and towns and
22 private property owners, and to assist municipalities in determining financial impacts when new
23 or changed zoning adversely affects business climate, land use, property value, natural and
24 historic resources, industrial use, or development of private property; and may permit the use of
25 land and buildings within the groundwater protection zones for agricultural purposes and shall
26 encourage the use of farmland in a manner which is consistent with the protection of groundwater
27 resources; and

28 (5) That each city and town amend its zoning ordinance to comply with the terms of this
29 chapter.

30 **45-24-30. General purposes of zoning ordinances.** – (a) Zoning regulations shall be
31 developed and maintained in accordance with a comprehensive plan prepared, adopted, and as
32 may be amended, in accordance with chapter 22.2 of this title and shall be designed to address the
33 following purposes. The general assembly recognizes these purposes, each with equal priority and
34 numbered for reference purposes only.

- 1 (1) Promoting the public health, safety, and general welfare.
- 2 (2) Providing for a range of uses and intensities of use appropriate to the character of the
3 city or town and reflecting current and expected future needs.
- 4 (3) Providing for orderly growth and development which recognizes:
 - 5 (i) The goals and patterns of land use contained in the comprehensive plan of the city or
6 town adopted pursuant to chapter 22.2 of this title;
 - 7 (ii) The natural characteristics of the land, including its suitability for use based on soil
8 characteristics, topography, and susceptibility to surface or groundwater pollution;
 - 9 (iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and
10 freshwater and coastal wetlands;
 - 11 (iv) The values of unique or valuable natural resources and features;
 - 12 (v) The availability and capacity of existing and planned public and/or private services
13 and facilities;
 - 14 (vi) The need to shape and balance urban and rural development; and
 - 15 (vii) The use of innovative development regulations and techniques.
- 16 (4) Providing for the control, protection, and/or abatement of air, water, groundwater,
17 and noise pollution, and soil erosion and sedimentation.
- 18 (5) Providing for the protection of the natural, historic, cultural, and scenic character of
19 the city or town or areas in the municipality.
- 20 (6) Providing for the preservation and promotion of agricultural production, forest,
21 silviculture, aquaculture, timber resources, and open space.
- 22 (7) Providing for the protection of public investment in transportation, water, stormwater
23 management systems, sewage treatment and disposal, solid waste treatment and disposal, schools,
24 recreation, public facilities, open space, and other public requirements.
- 25 (8) Promoting a balance of housing choices, for all income levels and groups, to assure
26 the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and
27 sanitary housing.
- 28 (9) Providing opportunities for the establishment of low and moderate income housing.
- 29 (10) Promoting safety from fire, flood, and other natural or unnatural disasters.
- 30 (11) Promoting a high level of quality in design in the development of private and public
31 facilities.
- 32 (12) Promoting implementation of the comprehensive plan of the city or town adopted
33 pursuant to chapter 22.2 of this title.
- 34 (13) Providing for coordination of land uses with contiguous municipalities, other

1 municipalities, the state, and other agencies, as appropriate, especially with regard to resources
2 and facilities that extend beyond municipal boundaries or have a direct impact on that
3 municipality.

4 (14) Providing for efficient review of development proposals, to clarify and expedite the
5 zoning approval process.

6 (15) Providing for procedures for the administration of the zoning ordinance, including,
7 but not limited to, variances, special-use permits, and, where adopted, procedures for
8 modifications.

9 (16) Providing opportunities for reasonable accommodations in order to comply with the
10 Rhode Island Fair Housing Practices Act, chapter 37 of title 34, the United States Fair Housing
11 Amendments Act of 1988 (FHAA), the Rhode Island Civil Rights of Persons with Disabilities
12 Act, chapter 87 of title 42, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §
13 12101 et seq.

14 Provided, however, that any zoning ordinance in which a community sets forth standards
15 or requirements for the location, design, construction, or maintenance of on-site ~~sewage disposal~~
16 wastewater treatment systems shall first be submitted to the director of the department of
17 environmental management ~~and the department of health~~ for approval as to the technical merits of
18 the ordinance. In addition, any zoning ordinance in which a municipality sets forth standards
19 regarding wetland ~~setbacks or~~ requirements, shall first be submitted to the director of the
20 department of environmental management for approval as to the technical merits of the
21 ordinance.

22 (b) Upon the effective date of this section, a city or town shall no longer be authorized to
23 adopt as a provision of its zoning ordinance new requirements that specify buffers or setbacks in
24 relation to freshwater wetland, freshwater wetland in the vicinity of the coast, or coastal wetland
25 or that specify setback distances between an onsite wastewater treatment system and a freshwater
26 wetlands, freshwater wetland in the vicinity of the coast or coastal wetland.

27 (c) Upon promulgation of state regulations to designate wetland buffers and setbacks
28 pursuant to §§ 2-1-18 through 2-1-28, cities and towns shall be prohibited from applying the
29 requirements in existing zoning ordinances pertaining to both wetland buffers and onsite
30 wastewater treatment system setbacks to development applications submitted to a municipality
31 after the effective date of said state regulations. All applications for development that were
32 submitted to a municipality prior to the effective date of state regulations designating wetland
33 buffers and setbacks, will remain subject to, as applicable, the zoning provisions pertaining to
34 wetland buffers or setbacks for onsite wastewater treatment systems that were in effect at the time

1 [the application was originally filed or granted approval, subject to the discretion of the](#)
2 [municipality to waive such requirements. Nothing herein shall rescind the authority of a city or](#)
3 [town to enforce local zoning requirements.](#)

4 [\(d\) Cities and towns shall act to amend their ordinances and regulations to conform to](#)
5 [this section within twelve \(12\) months of the effective date of state regulations referenced herein.](#)

6 **45-24-33. Standard provisions.** -- (a) A zoning ordinance addresses each of the purposes
7 stated in § 45-24-30 and addresses, through reasonable objective standards and criteria, the
8 following general provisions which are numbered for reference purposes only [except as](#)
9 [prohibited by §§ 45-24-30\(b\), 45-24-30\(c\), or 45-24-30\(d\):](#)

10 (1) Permitting, prohibiting, limiting, and restricting the development of land and
11 structures in zoning districts, and regulating those land and structures according to their type, and
12 the nature and extent of their use;

13 (2) Regulating the nature and extent of the use of land for residential, commercial,
14 industrial, institutional, recreational, agricultural, open space, or other use or combination of uses,
15 as the need for land for those purposes is determined by the city or town's comprehensive plan;

16 (3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and
17 other development by performance standards, or other requirements, related to air and water and
18 groundwater quality, noise and glare, energy consumption, soil erosion and sedimentation, and/or
19 the availability and capacity of existing and planned public or private services;

20 (4) Regulating within each district and designating requirements for:

21 (i) The height, number of stories, and size of buildings;

22 (ii) The dimensions, size, lot coverage, floor area ratios, and layout of lots or
23 development areas;

24 (iii) The density and intensity of use;

25 (iv) Access to air and light, views, and solar access;

26 (v) Open space, yards, courts, and buffers;

27 (vi) Parking areas, road design, and, where appropriate, pedestrian, bicycle, and other
28 circulator systems;

29 (vii) Landscaping, fencing, and lighting;

30 (viii) Appropriate drainage requirements and methods to manage stormwater runoff;

31 (ix) Public access to waterbodies, rivers, and streams; and

32 (x) Other requirements in connection with any use of land or structure;

33 (5) Permitting, prohibiting, limiting, and restricting development in flood plains or flood
34 hazard areas and designated significant natural areas;

- 1 (6) Promoting the conservation of energy and promoting energy-efficient patterns of
2 development;
- 3 (7) Providing for the protection of existing and planned public drinking water supplies,
4 their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and
5 watershed;
- 6 (8) Providing for adequate, safe, and efficient transportation systems; and avoiding
7 congestion by relating types and levels of development to the capacity of the circulation system,
8 and maintaining a safe level of service of the system;
- 9 (9) Providing for the preservation and enhancement of the recreational resources of the
10 city or town;
- 11 (10) Promoting an economic climate which increases quality job opportunities and the
12 overall economic well-being of the city or town and the state;
- 13 (11) Providing for pedestrian access to and between public and private facilities,
14 including, but not limited to schools, employment centers, shopping areas, recreation areas, and
15 residences;
- 16 (12) Providing standards for and requiring the provision of adequate and properly
17 designed physical improvements, including plantings, and the proper maintenance of property;
- 18 (13) Permitting, prohibiting, limiting, and restricting land use in areas where
19 development is deemed to create a hazard to the public health or safety;
- 20 (14) Permitting, prohibiting, limiting, and restricting extractive industries and earth
21 removal and requiring restoration of land after these activities;
- 22 (15) Regulating sanitary landfill, except as otherwise provided by state statute;
- 23 (16) Permitting, prohibiting, limiting, and restricting signs and billboards, and other
24 outdoor advertising devices;
- 25 (17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and
26 enforcement of airport hazard area zoning regulations under the provisions established in that
27 chapter;
- 28 (18) Designating areas of historic, cultural, and/or archaeological value and regulating
29 development in those areas under the provisions of chapter 24.1 of this title;
- 30 (19) Providing standards and requirements for the regulation, review, and approval of
31 any proposed development in connection with those uses of land, buildings, or structures
32 specifically designated as subject to development plan review in a zoning ordinance;
- 33 (20) Designating special protection areas for water supply and limiting or prohibiting
34 development in these areas, except as otherwise provided by state statute;

1 (21) Specifying requirements for safe road access to developments from existing streets,
2 including limiting the number, design, and location of curb cuts, and provisions for internal
3 circulation systems for new developments, and provisions for pedestrian and bicycle ways; and

4 (22) Reducing unnecessary delay in approving or disapproving development
5 applications, through provisions for preapplication conferences and other means.

6 (23) Providing for the application of the Rhode Island Fair Housing Practices Act,
7 chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA), the
8 Rhode Island Civil Rights People with Disabilities Act, chapter 37 of title 42, and the Americans
9 with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

10 (24) Regulating drive-through windows of varied intensity of use when associated with
11 land use activities and providing standards and requirements for the regulation, review and
12 approval of the drive-through windows, including, but not limited to:

13 (i) Identifying within which zoning districts drive-through windows may be permitted,
14 prohibited, or permitted by special use permit;

15 (ii) Specifying requirements for adequate traffic circulation; and

16 (iii) Providing for adequate pedestrian safety and access, including issues concerning
17 safety and access for those with disabilities.

18 (b) A zoning ordinance may include special provisions for any or all of the following:

19 (1) Authorizing development incentives, including, but not limited to, additional
20 permitted uses, increased development and density or additional design or dimensional flexibility
21 in exchange for:

22 (i) Increased open space;

23 (ii) Increased housing choices;

24 (iii) Traffic and pedestrian improvements;

25 (iv) Public and/or private facilities; and/or

26 (v) Other amenities as desired by the city or town and consistent with its comprehensive
27 plan. The provisions in the ordinance shall include maximum allowable densities of population
28 and/or intensities of use and shall indicate the type of improvements, amenities, and/or
29 conditions. Conditions may be made for donation in lieu of direct provisions for improvements or
30 amenities;

31 (2) Establishing a system for transfer of development rights within or between zoning
32 districts designated in the zoning ordinance; and

33 (3) Regulating the development adjacent to designated scenic highways, scenic
34 waterways, major thoroughfares, public greenspaces, or other areas of special public investment

1 or valuable natural resources.

2 (c) Slope of land shall not be excluded from the calculation of the buildable lot area or
3 the minimum lot size, or in the calculation of the number of buildable lots or units.

4 (d) Nothing in this section shall be construed to restrict a municipality's right, within
5 state and local regulations, to establish its own minimum lot size per zoning district in its town or
6 city.

7 SECTION 4. This act shall take effect upon passage.

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LC002156/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO AGRICULTURE AND FORESTRY - AGRICULTURE FUNCTIONS OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

1 This act would amend certain provisions of the general laws relative to the regulation of
2 freshwater wetlands, by establishing state standards for freshwater buffers and setbacks to be
3 promulgated by the department of environmental management and the coastal resources
4 management council.

5 This act would take effect upon passage.

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LC002156/SUB A
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