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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO AGRICULTURE AND FORESTRY - AGRICULTURAL FUNCTIONS

Introduced By: Representatives Chippendale, Filippi, Lyle, Place, and Quattrocchi

Date Introduced: February 26, 2020

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 2-1-22 of the General Laws in Chapter 2-1 entitled "Agricultural
2 Functions of Department of Environmental Management" is hereby amended to read as follows:

3 **2-1-22. Procedure for approval by director -- Notice of change of ownership --**
4 **Recordation of permit.**

5 (a)(1) Application for approval of a project to the director of environmental management
6 shall be made in a form to be prescribed by the director and provided by the director upon
7 request. Prior to the application, a request may be made for preliminary determination as to
8 whether this chapter applies. A preliminary determination shall be made by the director only after
9 an on-site review of the project and the determination shall be made within ~~thirty (30)~~ forty (40)
10 days of the request. This chapter shall be determined to apply if a significant alteration appears to
11 be contemplated and an application to alter a freshwater wetland, buffer, or floodplain will be
12 required. Within fourteen (14) days after receipt of the completed application accompanied by
13 plans and drawings of the proposed project, the plans and drawings to be prepared by the
14 registered professional engineer to a scale of not less than one inch (1") to one hundred feet
15 (100'), the director shall notify all landowners whose properties are within two hundred feet (200')
16 of the proposed project and the director will also notify the city or town council, the conservation
17 commission, the planning board, the zoning board, and any other individuals and agencies in any
18 city or town within the borders of which the project lies that may have reason, in the opinion of
19 the director, to be concerned with the proposal. The director may also establish a mailing list of

1 all interested persons and agencies who or that may wish to be notified of all applications.

2 (2) If the director fails to make the preliminary determination required by subsection
3 (a)(1) of this section, the applicant may select a registered professional engineer from the list
4 promulgated by the director pursuant to subsection (a)(6) of this section. The engineer selected
5 shall have the authority to complete the process required by this section, including, but not
6 limited to, any necessary application to alter wetlands if the alteration is deemed a significant
7 alteration of wetlands.

8 (3) If the director timely determines that the application requires a significant alteration to
9 the wetlands, the director shall have six (6) months to complete the entire process required by this
10 section, including, but not limited to, the notices and hearings required.

11 (4) If the director fails to complete the entire procedure within six (6) months, the
12 applicant may select a registered professional engineer from the list promulgated by the director
13 pursuant to subsection (a)(6) of this section who shall be empowered and authorized to determine
14 if the application complies with all statutes, rules and regulations applicable to freshwater
15 wetlands.

16 (5) If the registered professional engineer selected by the applicant determines that the
17 application complies with all statutes, rules and regulations applicable to freshwater wetlands, the
18 registered professional engineer shall provide written notice to the director of the determination,
19 and the director shall issue a permit to alter wetlands as approved or certified by the professional
20 engineer within seven (7) days of receipt of the written notice. The applicant shall be empowered
21 to commence the alteration immediately, unless restrained or enjoined by a court of competent
22 jurisdiction.

23 (6) Pursuant to subsection (a)(2) of this section, the director shall publish a list on or
24 before July 1, 2021 of no less than twenty (20) registered professional engineers qualified to
25 perform the actions and provisions of this section. The director shall develop and publish criteria,
26 rules and regulations on or before September 1, 2020 to allow registered professional engineers to
27 apply for inclusion on the list.

28 (7) In the event any applicant elects to retain the services of a registered professional
29 engineer in accordance with the provisions of subsection (a) of this section, the cost or fee
30 charged shall be paid in full by the director within sixty (60) days of completion of the services
31 rendered by the registered professional engineer.

32 (b) If the director receives any objection to the project within forty-five (45) days of the
33 mailing of the notice of application from his or her office, the objection to be in writing and of a
34 substantive nature, the director shall then schedule a public hearing in an appropriate place as

1 convenient as reasonably possible to the site of the proposed project. The director shall inform by
2 registered mail all objectors of the date, time, place, and subject of the hearing to be held. The
3 director shall further publish notice of the time, place, date, and subject of the hearing in one local
4 newspaper circulated in the area of the project and one statewide newspaper, the notices to appear
5 once per week for at least two (2) consecutive weeks prior to the week during which the hearing
6 is scheduled. The director shall establish a reasonable fee to cover the costs of the investigations,
7 notifications and publications, and hearing and the applicant shall be liable for the fee.

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

14 (d) In the event of a decision in favor of granting an application, the director shall issue a
15 permit for the applicant to proceed with the project and shall require the applicant to pay a permit
16 fee of one hundred dollars (\$100). The permit may be issued upon any terms and conditions,
17 including time for completion, that the director may require. Permits shall be valid for a period of
18 one year from the date of issue and shall expire at the end of that time unless renewed. A permit
19 may be renewed for up to three (3) additional one-year periods upon application by the original
20 permit holder or a subsequent transferee of the property subject to permit, unless the original
21 permit holder or transferee has failed to abide by the terms and conditions of the original permit
22 or any prior renewal. The director may require new hearings if, in his or her judgment, the
23 original intent of the permit is altered or extended by the renewal application or if the applicant
24 has failed to abide by the terms of the original permit in any way. In addition, in the event a
25 project authorized by a permit was not implemented by the permit holder or transferee because
26 approval of the project by a federal agency, for which application had been timely made, had not
27 been received or a federal agency had stopped the project from proceeding, prior to the expiration
28 of the permit, the permit holder or transferee may apply for a renewal of the permit at any time
29 prior to the tenth (10th) anniversary of the original issuance, and the application shall be deemed
30 to be an insignificant alteration subject to expedited treatment. The request for renewal of a
31 permit shall be made according to any procedures and form that the director may require.

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

1 director.

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

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

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

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

16 (1) Normal farming and ranching activities are those carried out by farmers as defined in
17 this title, including plowing, seeding, cultivating, land clearing for routine agriculture purposes,
18 harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes,
19 upland soil and water conservation practices, and maintenance of existing farm drainage
20 structures, existing farm ponds and existing farm roads are permissible at the discretion of
21 farmers in accordance with best farm management practices which assure that the adverse effects
22 to the flow and circulation patterns and chemical and biological characteristics of freshwater
23 wetlands are minimized and that any adverse effects on the aquatic environment are minimized.

24 (2) In the case of construction of new farm ponds, construction of new drainage
25 structures, and construction of new farm roads, the division of agriculture shall be notified by the
26 filing of a written application for the proposed construction by the property owner. The
27 application shall include a description of the proposed construction and the date upon which
28 construction is scheduled to begin, which date shall be no earlier than thirty (30) calendar days
29 after the date of the filing of the application. The division of agriculture shall review such
30 applications to determine that they are submitted for agricultural purposes and to ensure that
31 adverse effects to the flow and circulation patterns and chemical and biological characteristics of
32 freshwater wetlands are minimized and that any adverse effects on the aquatic environment are
33 minimized and will not result in a significant alteration to the freshwater wetlands. Pursuant to
34 this review, the division shall notify the applicant, in writing, whether the proposal is an

1 insignificant alteration. This notice shall be issued not later than thirty (30) days after the date that
2 the application was filed with the division. In the event notice is given by the division as required,
3 the application shall be conclusively presumed to be an insignificant alteration. If no notice is
4 given as required, or if an application is approved as an insignificant alteration, the applicant may
5 cause construction to be done in accordance with the application, and neither the applicant, nor
6 the applicant's agents or employees who cause or perform the construction in accordance with the
7 application, shall be liable for any criminal, civil, administrative or other fine, fee, or penalty,
8 including restoration costs for violations alleged to arise from the construction.

9 (3) The division of agriculture shall, in coordination with the agricultural council's
10 advisory committee, adopt regulations for subdivision (i)(2), and shall determine whether a
11 proposed activity, other than an activity listed in subdivision (i)(1), constitutes a normal farming
12 activity, or involves the best farm management practices. In making such a determination, the
13 division of agriculture shall consider the proposed activity on a case-by-case basis, relative to the
14 characteristics of the particular jurisdictional area in which the activity is proposed, and shall
15 consider whether the activity incorporates best farm management practices and ensures that
16 adverse effects to the flow and circulation patterns and chemical and biological characteristics of
17 freshwater wetlands, buffers, and floodplains are minimized and that any adverse effects on the
18 aquatic environment are minimized in each instance.

19 (4) Except as otherwise provided for farm road construction, filling of freshwater
20 wetlands conforms to the provisions of this chapter.

21 (j) For the purposes of this section, a "farmer" is an individual, partnership, or
22 corporation who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the
23 Internal Revenue Service, has a state farm tax number, and has earned ten thousand dollars
24 (\$10,000) gross income on farm products in each of the preceding four (4) years.

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

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO AGRICULTURE AND FORESTRY - AGRICULTURAL FUNCTIONS

1 This act would provide an alternative procedure regarding approval of freshwater
2 wetlands alteration applications if the director of the department of environmental management
3 (DEM) fails to adhere to the time limits for making a preliminary determination and/or the
4 completion of the application process within six (6) months by utilizing registered professional
5 engineers whose cost or fee would be paid by the department.

6 This act would take effect upon passage.

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