

2019 -- S 0405 SUBSTITUTE A

LC001639/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

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

Introduced By: Senators Sosnowski, Conley, Coyne, DiPalma, and Archambault

Date Introduced: February 27, 2019

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 2-1-20 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 **2-1-20. Definitions.**

4 As used in this chapter;

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

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

11 (3) "Bog" means a place where standing or slowly running water is near or at the surface
12 during normal growing season and/or where a vegetational community has over fifty percent
13 (50%) of the ground or water surface covered with sphagnum moss (Sphagnum) and/or where the
14 vegetational community is made up of one or more of, but not limited to nor necessarily including
15 all of, the following: blueberries, and cranberry (Vaccinium), leatherleaf (Chamaedaphne
16 calyculata), pitcher plant (Sarracenia purpurea), sundews (Droseraceae), orchids (Orchidaceae),
17 white cedar (Chamaecyparis thyoides), red maple (Acer rubrum), black spruce (Picea mariana),
18 bog aster (Aster nemoralis), larch (Laris laricina), bogrosemary (Andromeda glaucophylla),

1 azaleas (Rhododendron), laurels (Kalmia), sedges (Caryx), and bog cotton (Eriophorum).

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

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

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

8 (7) "Farm products" means goods, other than standing timber, produced by an
9 agricultural operation, as defined in § 2-23-4 and which may include:

10 (i) Crops grown, growing, or to be grown, including:

11 (A) Crops produced on trees, vines, and bushes; and

12 (B) Aquatic goods, including seaweeds, produced in aquacultural operations;

13 (ii) Livestock, born or unborn, including fish, shellfish and other aquatic goods produced
14 in aquacultural operations; or

15 (iii) Products of crops or livestock in their unmanufactured states.

16 ~~(7)~~(8) "Floodplain" means that land area adjacent to a river or stream or other body of
17 flowing water which is, on the average, likely to be covered with flood waters resulting from a
18 one-hundred (100) year frequency storm. A "one-hundred (100) year frequency storm" is one that
19 is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to
20 have a one percent (1%) probability of being equaled or exceeded in any given year.

21 ~~(8)~~(9) "Freshwater wetlands" includes, but is not limited to, those areas that are inundated
22 or saturated by surface or groundwater at a frequency and duration to support, and that under
23 normal circumstances do support a prevalence of vegetation adapted for life in saturated soil
24 conditions. Freshwater wetlands includes, but is not limited to: marshes, swamps, bogs, emergent,
25 and submergent plant communities, and for the purposes of this chapter, rivers, streams, ponds,
26 and vernal pools.

27 ~~(9)~~(10) "Jurisdictional area" means the following lands and waters, as defined herein
28 except as provided for in § 2-1-22(k), that shall be subject to regulation under this chapter:

29 (i) Freshwater wetlands;

30 (ii) Buffers;

31 (iii) Floodplains;

32 (iv) Areas subject to storm flowage;

33 (v) Areas subject to flooding; and

34 (vi) Contiguous areas that extend outward:

- 1 (A) Two hundred feet (200') from the edge of a river or stream;
2 (B) Two hundred feet (200') from the edge of a drinking water supply reservoir; and
3 (C) One hundred feet (100') from the edge of all other freshwater wetlands.

4 ~~(10)~~(11) "Marsh" means a place wholly or partly within the state where a vegetational
5 community exists in standing or running water during the growing season and/or is made up of
6 one or more of, but not limited to nor necessarily including all of, the following plants or groups
7 of plants: hydrophytic reeds (Phragmites), grasses (Cramineae), mannagrasses (Glyceria),
8 cutgrasses (Leersia), pickerelwoods (Pontederiaceae), sedges (Cyperaceae), rushes (Juncaceae),
9 cattails (Typha), water plantains (Alismataceae), bur-reeds (Sparganiaceae), pondweeds
10 (Zosteraceae), frog's bits (Hydrocharitaceae), arums (Araceae), duckweeds (Lemnaceae), water
11 lilies (Nymphaeaceae), water-milfoils (Haloragaceae), water-starworts (Callitricheae), bladder-
12 worts (Utricularia), pipeworts (Eriocaulon), sweet gale (Myrica gale), and buttonbush
13 (Cephalanthus occidentalis).

14 ~~(11)~~(12) "Near or at the surface" mean within eighteen (18) inches of the surface.

15 ~~(12)~~(13) "Pond" means a place natural or man-made, wholly or partly within the state,
16 where open-standing or slowly moving water is present for at least six (6) months a year.

17 ~~(13)~~(14) "River" means a body of water designated as a perennial stream by the United
18 States Department of Interior geologic survey on 7.5 minute series topographic maps and that is
19 not a pond as defined in this section.

20 ~~(14)~~(15) "Setback" means the minimum distance from the edge of a freshwater wetland at
21 which an approved activity or alteration may take place.

22 ~~(15)~~(16) "Stream" means any flowing body of water or watercourse that flows long
23 enough each year to develop and maintain a channel and that may carry groundwater discharge or
24 surface runoff.

25 ~~(16)~~(17) "Swamp" means a place, wholly or partly within the state, where ground water is
26 near or at the surface of the ground for a significant part of the growing season or runoff water
27 from surface drainage collects frequently and/or where a vegetational community is made up of a
28 significant portion of one or more of, but not limited to nor necessarily including all of, the
29 following: red maple (Acer rubum), elm (Ulmus americana), black spruce (Picea mariana), white
30 cedar (Chamaecyparis thyoides), ashes (Fraxinus), poison sumac (Rhus vernix), larch (Larix
31 laricina), spice bush (Lindera benzoin), alders (Alnus), skunk cabbage (Symplocarpus foetidus),
32 hellebore (Veratrum viride), hemlock (Thuja canadensis), sphagnums (Sphagnum), azaleas
33 (Rhododendron), black alder (Ilex verticillata), coast pepperbush (Clethra alnifolia), marsh
34 marigold (Caltha palustris), blueberries (Vaccinium), buttonbush (Cephalanthus occidentalis),

1 willow (Salicaceae), water willow (*Decodon verticillatus*), tupelo (*Nyssa sylvatica*), laurels
2 (*Kalmia*), swamp white oak (*Quercus bicolor*), or species indicative of marsh.

3 ~~(17)~~(18) "Vernal pool" means a depressional wetland basin that typically goes dry in
4 most years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in
5 both size and depth depending upon landscape position and parent materials. Vernal pools usually
6 support one or more of the following obligate indicator species: wood frog (*Lithobates*
7 *sylvaticus*), spotted salamander (*Ambystoma maculatum*), marbled salamander (*Ambystoma*
8 *opacum*), and fairy shrimp (*Eubbranchipus* spp.) and typically preclude sustainable populations of
9 predatory fish.

10 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 OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

- 1 This act would define the term "farm products" for the purposes of enforcement and
- 2 regulation of the agricultural functions of the department of environmental management.
- 3 This act would take effect upon passage.

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