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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

A N A C T

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

Introduced By: Representatives Cotter, Ajello, Potter, Chippendale, Roberts, and Bennett

Date Introduced: February 26, 2025

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 2-1-20 and 2-1-22 of the General Laws in Chapter 2-1 entitled
2 "Agricultural Functions of Department of Environmental Management" are hereby amended to
3 read as follows:

4 **2-1-20. Definitions.**

5 As used in this chapter;

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

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

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

1 bog aster (*Aster nemoralis*), larch (*Larix laricina*), bogrosemary (*Andromeda glaucophylla*), azaleas
2 (*Rhododendron*), laurels (*Kalmia*), sedges (*Caryx*), and bog cotton (*Eriophorum*).

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

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

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

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

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

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

22 (i) Freshwater wetlands;

23 (ii) Buffers;

24 (iii) Floodplains;

25 (iv) Areas subject to storm flowage;

26 (v) Areas subject to flooding; and

27 (vi) Contiguous areas that extend outward:

28 (A) Two hundred feet (200') from the edge of a river or stream;

29 (B) Two hundred feet (200') from the edge of a drinking water supply reservoir; and

30 (C) One hundred feet (100') from the edge of all other freshwater wetlands.

31 (10) "Marsh" means a place wholly or partly within the state where a vegetational
32 community exists in standing or running water during the growing season and/or is made up of one
33 or more of, but not limited to nor necessarily including all of, the following plants or groups of
34 plants: hydrophytic reeds (*Phragmites*), grasses (*Cramineae*), mannagrasses (*Glyceria*), cutgrasses

1 (Leersia), pickerelwoods (Pontederiaceae), sedges (Cyperaceae), rushes (Juncaceae), cattails
2 (Typha), water plantains (Alismataceae), bur-reeds (Sparganiaceae), pondweeds (Zosteraceae),
3 frog's bits (Hydrocharitaceae), arums (Araceae), duckweeds (Lemnaceae), water lilies
4 (Nymphaeaceae), water-milfoils (Haloragaceae), water-starworts (Callitricheae), bladder-worts
5 (Utricularia), pipeworts (Eriocaulon), sweet gale (Myrica gale), and buttonbush (Cephalanthus
6 occidentalis).

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

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

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

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

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

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

30 (17) "Vernal pool" means a depressional wetland basin that typically goes dry in most years
31 and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both size and
32 depth depending upon landscape position and parent materials. Vernal pools usually support one
33 or more of the following obligate indicator species: wood frog (*Lithobates sylvaticus*), spotted
34 salamander (*Ambystoma maculatum*), marbled salamander (*Ambystoma opacum*), and fairy

1 shrimp (*Eubbranchipus* spp.) and typically preclude sustainable populations of predatory fish.

2 (18) “Agricultural land” means land on which agricultural operations are being conducted,
3 or is suitable for agriculture operations, is under the control of a farmer, and has a USDA Farm
4 Tract/Farm Number or the individual farming the land has filed a 1040F U.S. Internal Revenue
5 Form with the Internal Revenue Service and has earned two thousand five hundred dollars (\$2,500)
6 gross income on farm products in the preceding year.

7 (19) “Farm” means a parcel of land or other defined place, together with any attendant
8 buildings, including dwellings, structures, machinery and equipment, tools and supplies, which is
9 used for agriculture operations.

10 (20) “Farmer” means a natural person who is either the owner of a farm or a principal
11 operator of a farm and who engages in agricultural operations.

12 (21) “Agricultural operations” includes any commercial enterprise that has as its primary
13 purpose horticulture and production of field crops of all types, viticulture, viniculture, floriculture,
14 forestry, stabling of horses, dairy farming, or aquaculture, or the raising of livestock, including for
15 the production of fiber, furbearing animals, poultry, or bees, and all such other operations, uses,
16 and activities as the director, in consultation with the chief of division of agriculture, may determine
17 to be agriculture, or an agricultural activity, use or operation.

18 **2-1-22. Procedure for approval by director — Notice of change of ownership —**
19 **Recordation of permit.**

20 (a) Application for approval of a project to the director of environmental management shall
21 be made in a form to be prescribed by the director and provided by the director upon request. Prior
22 to the application, a request may be made for preliminary determination as to whether this chapter
23 applies. A preliminary determination shall be made by the director only after an on-site review of
24 the project and the determination shall be made within thirty (30) days of the request. This chapter
25 shall be determined to apply if a significant alteration appears to be contemplated and an application
26 to alter a freshwater wetland, buffer, or floodplain will be required. Within fourteen (14) days after
27 receipt of the completed application accompanied by plans and drawings of the proposed project,
28 the plans and drawings to be prepared by the registered professional engineer to a scale of not less
29 than one inch (1") to one hundred feet (100'), the director shall notify all landowners whose
30 properties are within two hundred feet (200') of the proposed project and the director will also
31 notify the city or town council, the conservation commission, the planning board, the zoning board,
32 and any other individuals and agencies in any city or town within the borders of which the project
33 lies that may have reason, in the opinion of the director, to be concerned with the proposal. The
34 director may also establish a mailing list of all interested persons and agencies who or that may

1 wish to be notified of all applications.

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

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

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

1 according to any procedures and form that the director may require.

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

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

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

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

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

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

28 (2) In the case of construction of new farm ponds, construction of new drainage structures,
29 and construction of new farm roads, the division of agriculture shall be notified by the filing of a
30 written application for the proposed construction by the property owner. The application shall
31 include a description of the proposed construction and the date upon which construction is
32 scheduled to begin, which date shall be no earlier than thirty (30) calendar days after the date of
33 the filing of the application. The division of agriculture shall review such applications to determine
34 that they are submitted for agricultural purposes and to ensure that adverse effects to the flow and

1 circulation patterns and chemical and biological characteristics of freshwater wetlands are
2 minimized and that any adverse effects on the aquatic environment are minimized and will not
3 result in a significant alteration to the freshwater wetlands. Pursuant to this review, the division
4 shall notify the applicant, in writing, whether the proposal is an insignificant alteration. This notice
5 shall be issued not later than thirty (30) days after the date that the application was filed with the
6 division. In the event notice is given by the division as required, the application shall be
7 conclusively presumed to be an insignificant alteration. If no notice is given as required, or if an
8 application is approved as an insignificant alteration, the applicant may cause construction to be
9 done in accordance with the application, and neither the applicant, nor the applicant's agents or
10 employees who cause or perform the construction in accordance with the application, shall be liable
11 for any criminal, civil, administrative or other fine, fee, or penalty, including restoration costs for
12 violations alleged to arise from the construction.

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

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

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

29 ~~(k)~~ For the purposes of this section as applicable to normal farming and ranching activities
30 specified in §§ 2-1-22(i)(1) and (i)(2) above, freshwater wetlands shall be defined as: freshwater
31 wetlands, floodplains, areas subject to storm flowage, areas subject to flooding as defined in § 2-1-
32 20 and the land area within two hundred feet (200') of a flowing body of water having a width of
33 ten feet (10') or more during normal flow; the area of land within one hundred feet (100') of a
34 flowing body of water having a width of less than ten feet (10') during normal flow; and the area

1 of land within fifty feet (50') of a bog, marsh of one acre or greater, swamp of three (3) acres or
2 greater and pond not less than one quarter ($\frac{1}{4}$) acre in extent. These areas shall also serve as the
3 jurisdictional area.

4 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 redefine what constitutes a farm by reducing the amount of revenue from
2 farm products required to be sold from ten thousand (\$10,000) to two thousand five hundred dollars
3 (\$2500). The act would expand the farm to include all agricultural operations, including forestry.

4 This act would take effect upon passage.

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