

2019 -- S 0405

LC001639

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, used in a farming
9 operation and which are:

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;

15 (iii) Supplies used or produced in a farming operation; or

16 (iv) Products of crops or livestock in their unmanufactured states.

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

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

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

30 (i) Freshwater wetlands;

31 (ii) Buffers;

32 (iii) Floodplains;

33 (iv) Areas subject to storm flowage;

34 (v) Areas subject to flooding; and

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

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

15 ~~(11)~~(12) "Near or at the surface" mean within eighteen (18) inches of the surface.

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

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

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

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

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

1 marigold (*Caltha palustris*), blueberries (*Vaccinium*), buttonbush (*Cephalanthus occidentalis*),
2 willow (*Salicaceae*), water willow (*Decodon verticillatus*), tupelo (*Nyssa sylvatica*), laurels
3 (*Kalmia*), swamp white oak (*Quercus bicolor*), or species indicative of marsh.

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

11 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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