

MEMORANDUM IN OPPOSITION

S.5116-B by Senator Peter Harckham

Status: Senate Calendar Number 979

Date: May 2021
Contact: Michael Kelly

The New York State Association of REALTORS®, Inc. **strongly opposes S.5116-B (Harckham)** which would remove critical government transparency and oversight mechanisms when mapping boundaries of freshwater wetlands, including public hearings and comment periods, and would negatively impact construction of new single-family homes, rental units and commercial real estate development in New York State without providing a commensurate environmental benefit.

NYSAR has concerns with Section 3 of this legislation, which would completely repeal subdivisions 1 through 5 of § 24-0301 of the Environmental Conservation Law. This pertinent section of law provides practicable guidelines for the study and mapping of freshwater wetlands across the state. Also provided in this section are valuable opportunities for the public to submit comments throughout the mapping process. Removing open government procedures and allowing the Commissioner to readjust freshwater wetland maps at any time prior to the filing of the delineation of a boundary without notification to an affected property owner is extremely problematic.

Section 5 of the bill adds additional restrictions for property owners adjacent to a regulated freshwater wetland of “unusual local importance” or “unusual importance.” Restrictions would apply to activities 100 feet, 50 feet and 25 feet from a wetland boundary in certain instances, with severe penalties being incurred for violations. Without accurate and reliable mapping which can be accessed by the public, however, these regulations are overburdensome and impose increased liabilities for residential and commercial property owners. Violations, per the bill, would increase from a maximum civil penalty of \$11,000 to a maximum civil penalty of \$11,000 for each day every such violation occurs.

This legislation also indiscriminately designates all wetlands in New York City as being of “unusual importance,” without any pending study or evidence of necessity. This designation could have a negative impact particularly on Staten Island where there are a significant number of wetlands previously mapped.

This legislation would drastically alter and expand the scope of DEC’s regulatory authority to oversee “freshwater wetlands” across the state. Additionally, given the current fiscal constraints faced by New York State agencies, it is unclear how the DEC is going to accommodate the additional regulatory burden this bill would place upon the agency. Neither the text of this legislation, nor the sponsor’s memo, provides a fiscal impact statement.

The potential negative impact of this legislation on affordable housing and economic development cannot be overlooked. We believe that current federal, state and local laws and regulations regarding land use and development are not lacking in volume nor impact. Moreover, the significant expansion of the state’s



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regulatory authority, as proposed by this legislation, will create an unnecessary imbalance with significant negative ramifications for homebuyers, developers and the overall economic health of New York State.

For the above stated reasons, the New York State Association of REALTORS®, Inc. **strongly opposes S.5116-B (Harckham).**

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