

1 **2024 NYSAC Fall Seminar**  
2 **Standing Committee on Transportation and Public Works**  
3 **Resolution #2**

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5 **Resolution Concerning New York’s Freshwater Wetlands Act Rulemaking**  
6 **and Its Impact on Critical Local Highway, Bridge and Culvert Projects**

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8 **WHEREAS**, in 2022, New York’s Freshwater Wetlands Act (Environmental  
9 Conservation Law Article 24) was amended to increase application fees and make  
10 several significant changes to program administration; and

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12 **WHEREAS**, beginning January 1, 2023, water quality permit application fees were  
13 increased for public works projects in certain wetlands to support wetland resource  
14 protection activities by the State Environmental Conservation Department; and

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16 **WHEREAS**, beginning in 2025, the current official New York State Freshwater  
17 Wetlands Maps will no longer limit NYSDEC regulatory jurisdiction to wetlands  
18 depicted on those maps and instead, maps will become informational and any wetlands  
19 that meet new applicable definitions and criteria will be regulated by NYSDEC and  
20 subject to permitting, regardless of whether they appear on the informational maps; and

21  
22 **WHEREAS**, by January 1, 2028, the default size threshold for regulated wetlands will  
23 decrease from 12.4 acres to 7.4 acres, and small wetlands of “unusual importance” will  
24 continue to be regulated if they meet only one of 11 newly established criteria: and

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26 **WHEREAS**, consequently, NYSDEC recently submitted and published in the State  
27 Register a proposed rulemaking to implement, administer and enforce these changes;  
28 and

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30 **WHEREAS**, this regulatory action comes on the heels of the recent issuance of draft  
31 guidance for the review of bridge and culvert projects in non-tidal waters requiring a  
32 protection of waters permit and a water quality certificate used by NYSDEC, division of  
33 fish and wildlife (DFW) during the review of stream crossing (bridge and culvert)  
34 projects requiring a permit from NYSDEC; and

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36 **WHEREAS**, for many counties and towns, these changes are likely to double the  
37 number of locally owned culvert and bridge replacement, reconstruction and/or  
38 maintenance projects that would require state approval, additional oversight and a  
39 design of a structure for 150 percent span of the full bank—causing, for example, a  
40 \$90,000 culvert replacement project to become a \$1 million-plus bridge project; and

1 **WHEREAS**, if the volume of permit applications as a result of the new wetlands  
2 regulations and stream crossing guidance doubles, it could overwhelm an already time  
3 consuming and burdensome process and could make many of these vital public works  
4 projects cost prohibitive; and

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6 **WHEREAS**, the expanded number of increased applications for permits can be  
7 expected to render the water protection programs unworkable or, at best, prevent timely  
8 processing of applications for critical projects that may have wider impacts such as those  
9 impacting important wetlands and those in AA and AA (T), A and A (T), B and B (T),  
10 and C (T) streams; and

11  
12 **WHEREAS**, local highway maintenance resources are already stretched to the limit,  
13 and the added burden and delay in permitting could be untenable for many local  
14 governments and could result in inordinate road closures, possible flooding and  
15 disruptions of travel within communities that would have to find ways around a failed  
16 culvert or bridge crossing for an extended amount of time before state permission may  
17 be granted and the additional funds become available, which could be never depending  
18 on competing priorities; and

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20 **WHEREAS**, a bill passed by the legislature to add mostly inconsequential C Streams to  
21 the list of streams where transportation projects would be required to be permitted was  
22 vetoed in 2020, and again by Governor Kathy Hochul in 2022 and 2023, who wrote as  
23 justification for rejecting the legislation, that the bill “would have significant regulatory  
24 impacts on state and local transportation projects and would carry substantial costs for  
25 the State, as well as for local governments and the communities that would bear the  
26 impact of these new requirements”; and

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28 **WHEREAS**, in addition to using state licensed engineers and consultants, counties  
29 already receive significant oversight and guidance from the state’s County Soil and  
30 Water Conservation Districts to address environmental activities, implement flood  
31 prevention and recovery programs and provide technical expertise to municipalities on  
32 infrastructure needs.

33  
34 **NOW, THEREFORE, BE IT RESOLVED**, the New York State Association of  
35 Counties (NYSAC) requests that Governor Hochul continue to recognize that these new  
36 regulations, if not designed appropriately could have a detrimental impact on the very  
37 wetlands and streams they are intended to protect by overwhelming the permitting  
38 process, increasing project cost and delays significantly, and creating unnecessary  
39 operational burdens on county efforts to maintain transportation infrastructure; and

1 **BE IT FURTHER RESOLVED**, as part of the regulatory process, consideration needs  
2 to be given to developing an MOU or general permit program that can address the intent  
3 of the wetlands and stream protection statutes, regulations and guidance and at the  
4 same time, allow for a uniform and expedited permit and review process for local public  
5 works projects; and  
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7 **BE IT FURTHER RESOLVED**, that permit fees be waived for local government  
8 sponsored transportation and public works projects as these are necessary activities  
9 intended to address a public purpose and as such applying these fees should not be  
10 subject to state assessments; and  
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12 **BE IT FURTHER RESOLVED**, copies of this resolution be sent to the counties of  
13 New York State encouraging member counties to enact similar resolutions; and  
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15 **BE IT FURTHER RESOLVED**, that NYSAC shall forward copies of this resolution to  
16 Governor Kathy Hochul, the New York Legislature, the Commissioners of NYSDEC and  
17 NYSDOT, and all others deemed necessary and proper.