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LAW/KR

P.L.2014, CHAPTER 89, *approved January 9, 2015*  
Senate, No. 2021 (*First Reprint*)

1 AN ACT exempting certain temporary farm structures from the  
2 permit and transition area requirements of the “Freshwater  
3 Wetlands Protection Act,” and amending P.L.1987, c.156.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. Section 4 of P.L. 1987, c.156 (C.13:9B-4) is amended to  
9 read as follows:

10 4. The following are exempt from the requirement of a  
11 freshwater wetlands permit and transition area requirements unless  
12 the United States Environmental Protection Agency's regulations  
13 providing for the delegation to the state of the federal wetlands  
14 program conducted pursuant to the Federal Act require a permit for  
15 any of these activities, in which case the department shall require a  
16 permit for those activities so identified by that agency:

17 a. Normal farming, silviculture, and ranching activities such as  
18 plowing, seeding, cultivating, minor drainage, harvesting for the  
19 production of food and fiber, or upland soil and water conservation  
20 practices; construction or maintenance of farm or stock ponds or  
21 irrigation ditches, or the maintenance of drainage ditches; the  
22 installation of temporary farm structures <sup>1</sup>with only a dirt or fabric  
23 floor<sup>1</sup>, including hoophouses and polyhouses, and any grading or  
24 land contouring associated therewith on lands that were actively  
25 cultivated on or before July 1, 1988, have been in active agricultural  
26 use since then, were in active agricultural use at the time that the  
27 temporary farm structures were or are to be erected, and are  
28 identified as “ModAg” farmed wetlands on the Wetland Maps  
29 promulgated by the Department of Environmental Protection in  
30 1988; construction or maintenance of farm roads or forest roads  
31 constructed and maintained in accordance with best management  
32 practices to assure that flow and circulation patterns and chemical  
33 and biological characteristics of freshwater wetlands are not  
34 impaired and that any adverse effect on the aquatic environment  
35 will be minimized;

36 b. Normal harvesting of forest products in accordance with a  
37 forest management plan approved by the State Forester;

38 c. Areas regulated as a coastal wetland pursuant to  
39 P.L.1970, c. 272 (C. 13:9A-1 et seq.);

40 d. Projects for which (1) preliminary site plan or subdivision

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup>Senate SEN committee amendments adopted June 16, 2014.**

1 applications have received preliminary approvals from the local  
2 authorities pursuant to the "Municipal Land Use Law,"  
3 P.L.1975, c. 291 (C. 40:55D-1 et seq.) prior to the effective date of  
4 this act, (2) preliminary site plan or subdivision applications have  
5 been submitted prior to June 8, 1987, or (3) permit applications  
6 have been approved by the U.S. Army Corps of Engineers prior to  
7 the effective date of this act, which projects would otherwise be  
8 subject to State regulation on or after the effective date of this act,  
9 shall be governed only by the Federal Act, and shall not be subject  
10 to any additional or inconsistent substantive requirements of this  
11 act; provided, however, that upon the expiration of a permit issued  
12 pursuant to the Federal Act any application for a renewal thereof  
13 shall be made to the appropriate regulatory agency. The department  
14 shall not require the establishment of a transition area as a condition  
15 of any renewal of a permit issued pursuant to the Federal Act prior  
16 to the effective date of this act. Projects not subject to the  
17 jurisdiction of the United States Army Corps of Engineers and for  
18 which preliminary site or subdivision applications have been  
19 approved prior to the effective date of this act shall not require  
20 transition areas;

21 e. The exemptions in subsections a. and b. of this section shall  
22 not apply to any discharge of dredged or fill material into a  
23 freshwater wetland incidental to any activity which involves  
24 bringing an area of freshwater wetlands into a use to which it was  
25 not previously subject, where the flow or circulation patterns of the  
26 waters may be impaired, or the reach of the waters is reduced.

27 (cf: P.L.1987, c.156, s.4)

28

29 2. This act shall take effect immediately and shall also apply to  
30 all pending and completed enforcement actions brought by the  
31 Department of Environmental Protection.

32

33

34

35

36 Exempts certain temporary farm structures from permit and  
37 transition area requirements of "Freshwater Wetlands Protection  
38 Act."

**SENATE, No. 2021**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED MAY 5, 2014

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Exempts certain temporary farm structures from permit and transition area requirements of “Freshwater Wetlands Protection Act.”

**CURRENT VERSION OF TEXT**

As introduced.



S2021 SWEENEY

2

1 AN ACT exempting certain temporary farm structures from the  
2 permit and transition area requirements of the “Freshwater  
3 Wetlands Protection Act,” and amending P.L.1987, c.156.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

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8 1. Section 4 of P.L. 1987, c.156 (C.13:9B-4) is amended to  
9 read as follows:

10 4. The following are exempt from the requirement of a  
11 freshwater wetlands permit and transition area requirements unless  
12 the United States Environmental Protection Agency's regulations  
13 providing for the delegation to the state of the federal wetlands  
14 program conducted pursuant to the Federal Act require a permit for  
15 any of these activities, in which case the department shall require a  
16 permit for those activities so identified by that agency:

17 a. Normal farming, silviculture, and ranching activities such as  
18 plowing, seeding, cultivating, minor drainage, harvesting for the  
19 production of food and fiber, or upland soil and water conservation  
20 practices; construction or maintenance of farm or stock ponds or  
21 irrigation ditches, or the maintenance of drainage ditches; the  
22 installation of temporary farm structures, including hoophouses and  
23 polyhouses, and any grading or land contouring associated  
24 therewith on lands that were actively cultivated on or before July 1,  
25 1988, have been in active agricultural use since then, were in active  
26 agricultural use at the time that the temporary farm structures were  
27 or are to be erected, and are identified as “ModAg” farmed wetlands  
28 on the Wetland Maps promulgated by the Department of  
29 Environmental Protection in 1988; construction or maintenance of  
30 farm roads or forest roads constructed and maintained in accordance  
31 with best management practices to assure that flow and circulation  
32 patterns and chemical and biological characteristics of freshwater  
33 wetlands are not impaired and that any adverse effect on the aquatic  
34 environment will be minimized;

35 b. Normal harvesting of forest products in accordance with a  
36 forest management plan approved by the State Forester;

37 c. Areas regulated as a coastal wetland pursuant to  
38 P.L.1970, c. 272 (C. 13:9A-1 et seq.);

39 d. Projects for which (1) preliminary site plan or subdivision  
40 applications have received preliminary approvals from the local  
41 authorities pursuant to the "Municipal Land Use Law,"  
42 P.L.1975, c. 291 (C. 40:55D-1 et seq.) prior to the effective date of  
43 this act, (2) preliminary site plan or subdivision applications have  
44 been submitted prior to June 8, 1987, or (3) permit applications  
45 have been approved by the U.S. Army Corps of Engineers prior to  
46 the effective date of this act, which projects would otherwise be

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 subject to State regulation on or after the effective date of this act,  
2 shall be governed only by the Federal Act, and shall not be subject  
3 to any additional or inconsistent substantive requirements of this  
4 act; provided, however, that upon the expiration of a permit issued  
5 pursuant to the Federal Act any application for a renewal thereof  
6 shall be made to the appropriate regulatory agency. The department  
7 shall not require the establishment of a transition area as a condition  
8 of any renewal of a permit issued pursuant to the Federal Act prior  
9 to the effective date of this act. Projects not subject to the  
10 jurisdiction of the United States Army Corps of Engineers and for  
11 which preliminary site or subdivision applications have been  
12 approved prior to the effective date of this act shall not require  
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14 e. The exemptions in subsections a. and b. of this section shall  
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19 waters may be impaired, or the reach of the waters is reduced.  
20 (cf: P.L.1987, c.156, s.4)

21

22 2. This act shall take effect immediately and shall also apply to  
23 all pending and completed enforcement actions brought by the  
24 Department of Environmental Protection.

25

26

27

#### STATEMENT

28

29 This bill would exempt certain temporary farm structures,  
30 including hoopouses and polyhouses, from the permit and  
31 transition area requirements of the “Freshwater Wetlands Protection  
32 Act.”

33 The “Freshwater Wetlands Protection Act” includes an  
34 exemption from the permit and transition area requirements for  
35 “normal farming” activities. The Department of Environmental  
36 Protection (DEP) has adopted regulations which incorporate, but do  
37 not expand on, the statutory definition of normal farming.

38 Farming activities in New Jersey have changed considerably  
39 since the enactment of the “Freshwater Wetlands Protection Act” in  
40 1987. Nursery crops and nursery products now account for almost  
41 half of New Jersey’s farm income, and approximately 90 percent of  
42 all nursery stock is grown for all or a portion of the year within  
43 temporary farm structures commonly known as hoopouses or  
44 polyhouses. These temporary farm structures have the effect of  
45 extending the growing season, allowing New Jersey farmers to  
46 compete with farmers from states with warmer climates and longer  
47 growing seasons. The use of hoopouses and polyhouses  
48 minimizes and more effectively controls the use of pesticides and

1 herbicides. These structures also reduce the amount of irrigation  
2 water required for crops and, when properly installed and  
3 maintained, minimize soil erosion.

4 In 1988, the DEP issued maps delineating the location and extent  
5 of wetlands throughout the State. Included in the mapping process  
6 were areas which, according to infrared aerial photography,  
7 exhibited some of the characteristics of wetlands, but which were  
8 actively farmed as of December 23, 1985. These so-called “farmed  
9 wetlands” are labeled on the DEP wetlands maps as “ModAg”  
10 farmed wetlands and are defined in the DEP’s “Freshwater  
11 Wetlands Protection Act” rules at N.J.A.C.7:7A-1.4 as follows:

12

13 "Farmed wetland" means a freshwater wetland, as  
14 defined in this section, which was both manipulated and  
15 cropped before December 23, 1985, and has been in active  
16 agricultural use continuously since then. This term also  
17 includes a wetland that was manipulated and used for  
18 pasture or hayland before December 23, 1985, which has  
19 been in active use for pasture or hayland continuously since  
20 then. An area that lies fallow as part of a conventional  
21 rotational cycle that does not exceed five years is considered  
22 to be in active agricultural use.

23

24 Farmed wetlands have largely been deprived of their wetland  
25 functions and values by ongoing manipulation and cropping. In  
26 recognition of this, the federal government considers areas that  
27 were actively farmed as of December 23, 1985 to be “prior  
28 converted croplands” that are treated as uplands for the purposes of  
29 section 404 of the federal “Clean Water Act.”

30 All of the foregoing notwithstanding, the DEP has undertaken  
31 enforcement actions pursuant to the “Freshwater Wetlands  
32 Protection Act,” alleging that the placement of temporary farm  
33 structures and the associated grading or contouring of land in pre-  
34 existing farm fields which met the definition of farmed wetlands  
35 was not a normal farming activity or that it involved bringing an  
36 area of wetlands into a use to which it was not previously subject.  
37 The initiation of such enforcement activities without the prior  
38 promulgation of regulations putting the farming community on  
39 notice that it considered such activities to be in violation of the  
40 “Freshwater Wetlands Protection Act” was inappropriate and unfair.  
41 This bill would apply to all pending and completed enforcement  
42 actions.

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### **SENATE, No. 2021**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 16, 2014

The Senate Environment and Energy Committee reports favorably and with committee amendments Senate Bill No. 2021.

This bill, as amended, would exempt certain temporary farm structures with only a dirt or fabric floor, including hoophouses and polyhouses, from the permit and transition area requirements of the “Freshwater Wetlands Protection Act.”

The “Freshwater Wetlands Protection Act” includes an exemption from the permit and transition area requirements for “normal farming” activities. The Department of Environmental Protection (DEP) has adopted regulations which incorporate, but do not expand on, the statutory description of normal farming.

Farming activities in New Jersey have changed considerably since the enactment of the “Freshwater Wetlands Protection Act” in 1987. Nursery crops and nursery products now account for almost half of New Jersey’s farm income, and approximately 90 percent of all nursery stock is grown for all or a portion of the year within temporary farm structures commonly known as hoophouses or polyhouses. These temporary farm structures have the effect of extending the growing season, allowing New Jersey farmers to compete with farmers from states with warmer climates and longer growing seasons. The use of hoophouses and polyhouses minimizes and more effectively controls the use of pesticides and herbicides. These structures also reduce the amount of irrigation water required for crops and, when properly installed and maintained, minimize soil erosion.

In 1988, the DEP issued maps delineating the location and extent of wetlands throughout the State. Included in the mapping process were areas which, according to infrared aerial photography, exhibited some of the characteristics of wetlands, but which were actively farmed as of December 23, 1985. These so-called “farmed wetlands” are labeled on the DEP wetlands maps as “ModAg” farmed wetlands and are defined in the DEP’s “Freshwater Wetlands Protection Act” rules at N.J.A.C.7:7A-1.4 as follows:

"Farmed wetland" means a freshwater wetland, as defined in this section, which was both manipulated and cropped before December 23, 1985, and has been in active agricultural use continuously since then. This term also includes a wetland that was manipulated and used for pasture or hayland before December 23, 1985, which has been in active use for pasture or hayland continuously since then. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be in active agricultural use.

Farmed wetlands have largely been deprived of their wetland functions and values by ongoing manipulation and cropping. In recognition of this, the federal government considers areas that were actively farmed as of December 23, 1985 to be "prior converted croplands" that are treated as uplands for the purposes of section 404 of the federal "Clean Water Act."

All of the foregoing notwithstanding, the DEP has undertaken enforcement actions pursuant to the "Freshwater Wetlands Protection Act," alleging that the placement of temporary farm structures and the associated grading or contouring of land in pre-existing farm fields which met the definition of farmed wetlands was not a normal farming activity or that it involved bringing an area of wetlands into a use to which it was not previously subject. The enforcement activities were initiated without the prior promulgation of regulations to put the farming community on notice that it considered such activities to be in violation of the "Freshwater Wetlands Protection Act." This bill would apply to all pending and completed enforcement actions.

The committee amendment would clarify that temporary farm structures with only a dirt or fabric floor would qualify for the exemption from the permit and transition area requirements of the "Freshwater Wetlands Protection Act."

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES  
COMMITTEE

STATEMENT TO  
[First Reprint]  
**SENATE, No. 2021**

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 22, 2014

The Assembly Agriculture and Natural Resources Committee reports favorably Senate Bill No. 2021 (1R).

This bill would exempt from the permit and transition area requirements of the “Freshwater Wetlands Protection Act” certain temporary farm structures with only a dirt or fabric floor, including hoophouses and polyhouses.

The “Freshwater Wetlands Protection Act” includes an exemption from the permit and transition area requirements for “normal farming” activities. The Department of Environmental Protection (DEP) has adopted regulations which incorporate, but do not expand on, the statutory description of normal farming.

Farming activities in New Jersey have changed considerably since the enactment of the “Freshwater Wetlands Protection Act” in 1987. Nursery crops and nursery products now account for almost half of New Jersey’s farm income, and approximately 90 percent of all nursery stock is grown for all or a portion of the year within temporary farm structures commonly known as hoophouses or polyhouses. These temporary farm structures have the effect of extending the growing season, allowing New Jersey farmers to compete with farmers from states with warmer climates and longer growing seasons. The use of hoophouses and polyhouses minimizes and more effectively controls the use of pesticides and herbicides. These structures also reduce the amount of irrigation water required for crops and, when properly installed and maintained, minimize soil erosion.

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Farmed wetlands have largely been deprived of their wetland functions and values by ongoing manipulation and cropping. In recognition of this, the federal government considers areas that were actively farmed as of December 23, 1985 to be "prior converted croplands" that are treated as uplands for the purposes of section 404 of the federal "Clean Water Act."

All of the foregoing notwithstanding, the DEP has undertaken enforcement actions pursuant to the "Freshwater Wetlands Protection Act," alleging that the placement of temporary farm structures and the associated grading or contouring of land in pre-existing farm fields which met the definition of farmed wetlands was not a normal farming activity or that it involved bringing an area of wetlands into a use to which it was not previously subject. The enforcement activities were initiated without the prior promulgation of regulations to put the farming community on notice that it considered such activities to be in violation of the "Freshwater Wetlands Protection Act." This bill would apply to all pending and completed enforcement actions.

As reported, this bill is identical to Assembly Bill No. 3124 as amended and also reported by the committee.

# ASSEMBLY, No. 3124

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MAY 8, 2014

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblywoman CELESTE M. RILEY**  
**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Exempts certain temporary farm structures from permit and transition area requirements of “Freshwater Wetlands Protection Act.”

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/27/2014)

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2 permit and transition area requirements of the "Freshwater  
3 Wetlands Protection Act," and amending P.L.1987, c.156.

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34 environment will be minimized;

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36 forest management plan approved by the State Forester;

37 c. Areas regulated as a coastal wetland pursuant to P.L. 1970,  
38 c. 272 (C. 13:9A-1 et seq.);

39 d. Projects for which (1) preliminary site plan or subdivision  
40 applications have received preliminary approvals from the local  
41 authorities pursuant to the "Municipal Land Use Law," P.L. 1975, c.  
42 291 (C. 40:55D-1 et seq.) prior to the effective date of this act, (2)  
43 preliminary site plan or subdivision applications have been  
44 submitted prior to June 8, 1987, or (3) permit applications have  
45 been approved by the U.S. Army Corps of Engineers prior to the

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Matter underlined thus is new matter.

1 effective date of this act, which projects would otherwise be subject  
2 to State regulation on or after the effective date of this act, shall be  
3 governed only by the Federal Act, and shall not be subject to any  
4 additional or inconsistent substantive requirements of this act;  
5 provided, however, that upon the expiration of a permit issued  
6 pursuant to the Federal Act any application for a renewal thereof  
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11 jurisdiction of the United States Army Corps of Engineers and for  
12 which preliminary site or subdivision applications have been  
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15 e. The exemptions in subsections a. and b. of this section shall  
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21 (cf: P.L.1987, c.156, s.4)

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24 all pending and completed enforcement actions brought by the  
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#### STATEMENT

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43 all nursery stock is grown for all or a portion of the year within  
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6 of wetlands throughout the State. Included in the mapping process  
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14 "Farmed wetland" means a freshwater wetland, as  
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25 Farmed wetlands have largely been deprived of their wetland  
26 functions and values by ongoing manipulation and cropping. In  
27 recognition of this, the federal government considers areas that  
28 were actively farmed as of December 23, 1985 to be "prior  
29 converted croplands" that are treated as uplands for the purposes of  
30 section 404 of the federal "Clean Water Act."

31 All of the foregoing notwithstanding, the DEP has undertaken  
32 enforcement actions pursuant to the "Freshwater Wetlands  
33 Protection Act," alleging that the placement of temporary farm  
34 structures and the associated grading or contouring of land in pre-  
35 existing farm fields which met the definition of farmed wetlands  
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37 area of wetlands into a use to which it was not previously subject.  
38 The initiation of such enforcement activities without the prior  
39 promulgation of regulations putting the farming community on  
40 notice that it considered such activities to be in violation of the  
41 "Freshwater Wetlands Protection Act" was inappropriate and unfair.  
42 This bill would apply to all pending and completed enforcement  
43 actions.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 3124**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 22, 2014

The Assembly Agriculture and Natural Resources Committee reports favorably and with committee amendments Assembly Bill No. 3124.

This bill, as amended, would exempt from the permit and transition area requirements of the “Freshwater Wetlands Protection Act” certain temporary farm structures with only a dirt or fabric floor, including hoophouses and polyhouses.

The “Freshwater Wetlands Protection Act” includes an exemption from the permit and transition area requirements for “normal farming” activities. The Department of Environmental Protection (DEP) has adopted regulations which incorporate, but do not expand on, the statutory definition of normal farming.

Farming activities in New Jersey have changed considerably since the enactment of the “Freshwater Wetlands Protection Act” in 1987. Nursery crops and nursery products now account for almost half of New Jersey’s farm income, and approximately 90 percent of all nursery stock is grown for all or a portion of the year within temporary farm structures commonly known as hoophouses or polyhouses. These temporary farm structures have the effect of extending the growing season, allowing New Jersey farmers to compete with farmers from states with warmer climates and longer growing seasons. The use of hoophouses and polyhouses minimizes and more effectively controls the use of pesticides and herbicides. These structures also reduce the amount of irrigation water required for crops and, when properly installed and maintained, minimize soil erosion.

In 1988, the DEP issued maps delineating the location and extent of wetlands throughout the State. Included in the mapping process were areas which, according to infrared aerial photography, exhibited some of the characteristics of wetlands, but which were actively farmed as of December 23, 1985. These so-called “farmed wetlands” are labeled on the DEP wetlands maps as “ModAg” farmed wetlands and are defined in the DEP’s “Freshwater Wetlands Protection Act” rules at N.J.A.C.7:7A-1.4 as follows:

"Farmed wetland" means a freshwater wetland, as defined in this section, which was both manipulated and cropped before December 23, 1985, and has been in active agricultural use continuously since then. This term also includes a wetland that was manipulated and used for pasture or hayland before December 23, 1985, which has been in active use for pasture or hayland continuously since then. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be in active agricultural use.

Farmed wetlands have largely been deprived of their wetland functions and values by ongoing manipulation and cropping. In recognition of this, the federal government considers areas that were actively farmed as of December 23, 1985 to be "prior converted croplands" that are treated as uplands for the purposes of section 404 of the federal "Clean Water Act."

All of the foregoing notwithstanding, the DEP has undertaken enforcement actions pursuant to the "Freshwater Wetlands Protection Act," alleging that the placement of temporary farm structures and the associated grading or contouring of land in pre-existing farm fields which met the definition of farmed wetlands was not a normal farming activity or that it involved bringing an area of wetlands into a use to which it was not previously subject. The enforcement activities were initiated without the prior promulgation of regulations to put the farming community on notice that it considered such activities to be in violation of the "Freshwater Wetlands Protection Act." This bill would apply to all pending and completed enforcement actions.

The committee amendments make the bill identical to Senate Bill No. 2021 (1R) as also reported by the committee, by clarifying that temporary farm structures with only a dirt or fabric floor would qualify for the exemption from the permit and transition area requirements of the "Freshwater Wetlands Protection Act."

#### COMMITTEE AMENDMENTS:

The committee amendments clarify that temporary farm structures with only a dirt or fabric floor would qualify for the exemption from the permit and transition area requirements.