S T A T E O F N E W Y O R K

S. 740 A. 2030

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 15, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law, in relation to authorizing certain towns in the Peconic Bay region to establish community housing opportunity funds, provided that such towns adopt a housing plan adhering to smart growth principles in conjunction with the creation of such community housing opportunity fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds that chapter 114 of the laws of 1998 enacted provisions of law relating to Peconic Bay region community preservation funds. Such chapter permitted the five towns of the Peconic Bay region to establish a dedicated fund for the acquisition of interests in real property for the purposes of open space, farmland, and historic preservation, as well as park and recreation purposes. The revenue for such fund was derived from a two percent real estate transfer tax. Community preservation funds in each of the five Peconic Bay region towns were approved overwhelmingly by public referendum.

The enactment of this land preservation has been an incredible success. The funds have generated over one hundred million dollars as of July 2002, resulting in thousands of acres of land being protected on eastern Long Island. The program has received national recognition for its innovative and creative approach to community preservation.

Just as critical to the future of the Peconic Bay region is the human need to protect community stability by providing for an adequate supply of community housing opportunities for all segments of the Peconic Bay

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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community. One of the great paradoxes of the Peconic Bay regional economy is that the number of housing units in the Peconic Bay region has increased from 38,000 in 1960 to more than 84,000 today. Yet, the availability of affordable housing opportunities for moderate income and working class residents is in critically short supply.

The adverse impacts from this shortage of housing opportunities are critical. For example, local employers have difficulty hiring and retaining employees because of housing costs and availability. Local volunteer emergency services agencies experience difficulty in recruitment and retention. Long time residents are forced to leave the area. Traffic congestion is exacerbated by the importation of labor from areas with lower housing costs. Other land uses such as motels are being converted to emergency and permanent housing. Finally, the lack of affordable housing is resulting in residents being forced to live in substandard, illegal conditions.

Unique demographics and economics in the Peconic Bay region, and a lack of affordable dwelling units, are creating this housing shortage. The combination of the Peconic Bay region's attractiveness, proximity to the dense population of the New York metropolitan region, and proximity to that region's extraordinary wealth, makes the Peconic Bay region a prime location for seasonal and luxury homes.

While this combination of extraordinary attractiveness, population and wealth has created a strong local economy for the Peconic Bay region, it has resulted in housing problems for local families. In the Peconic Bay region, 37 percent of all housing units are seasonal. The population of the region increases from 125,000 to more than 320,000 during the summer season.

In summary, the demand of land for luxury and seasonal homes and seasonal rentals has left a short supply of housing opportunities for moderate income and working class local residents. The Peconic Bay region needs a balanced housing policy where there exists a variety of housing types and opportunities across the region's economic spectrum.

The Peconic Bay region requires the same creativity, planning, and community consensus that resulted in the community preservation fund in order to address the issue of housing opportunity. Further, increased housing opportunities must be accomplished in the context of rational long term planning.

It is the purpose of this legislation, to give the towns of the Peconic Bay region the authority and resources needed to establish community housing opportunities. Specifically, this legislation would permit each town to establish a dedicated community housing opportunity fund to increase housing opportunities in the region. Such fund shall be financed by a combination of state and local funds. Further, a town housing plan adhering to smart growth principles would be required to be approved and implemented to insure that these new housing opportunities are enacted in the context of a comprehensive plan. The fund shall be enacted by local law subject to a mandatory referendum.

S 2. This act shall be known and may be cited as the "Peconic Bay region community housing opportunity act".

S 3. The town law is amended by adding a new section 64-k to read as follows:

S 64-K. PECONIC BAY REGION COMMUNITY HOUSING OPPORTUNITY FUND. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PECONIC BAY REGION" MEANS THE TOWNS OF EAST HAMPTON, RIVERHEAD, SHELTER ISLAND, SOUTHAMPTON, AND SOUTHOLD.

(B) "COMMUNITY HOUSING" SHALL BE DEFINED AS HOUSING FOR HOUSEHOLDS WITH INCOMES AT OR BELOW THE MEDIAN INCOME FOR EACH TOWN WITHIN THE PECONIC BAY REGION.

(C) "BOARD" MEANS THE ADVISORY BOARD CREATED PURSUANT TO THIS SECTION.

(D) "FUND" MEANS THE COMMUNITY HOUSING OPPORTUNITY FUND AUTHORIZED PURSUANT TO THIS SECTION.

(E) "EDUCATION IMPACT PAYMENT" MEANS A PAYMENT MADE FROM THE FUND TO SCHOOL DISTRICTS NOT TO EXCEED AN AMOUNT EQUAL TO THE ADDITIONAL ANNUAL COST OF EDUCATING THE NUMBER OF STUDENTS THAT WILL BE ADDED TO A SCHOOL DISTRICT AS A RESULT OF THE PRODUCTION OF COMMUNITY HOUSING PURSUANT TO THE FUND.

2. FUND AUTHORIZED. THE TOWN BOARD OF ANY TOWN IN THE PECONIC BAY REGION IS AUTHORIZED TO ESTABLISH BY LOCAL LAW A COMMUNITY HOUSING OPPORTUNITY FUND, PURSUANT TO THE PROVISIONS OF THIS SECTION. DEPOSITS INTO THE FUND MAY INCLUDE REVENUES OF THE LOCAL GOVERNMENT FROM WHATEVER SOURCE, INCLUDING BUT NOT LIMITED TO: (A) ALL PROCEEDS FROM ANY INDEBTEDNESS OR OBLIGATIONS ISSUED PURSUANT TO THE LOCAL FINANCE LAW FOR COMMUNITY HOUSING OPPORTUNITY PURPOSES AS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION; (B) GENERAL FUND BALANCES OR SURPLUSES; (C) FUNDS RECEIVED BY THE TOWN FROM THE APPORTIONMENT OF MORTGAGE RECORDING TAXES RECEIVED FROM THE COUNTY PURSUANT TO ARTICLE ELEVEN OF THE TAX LAW; (D) FUNDS RECEIVED BY THE TOWN FROM THE SALE OF DEVELOPMENT RIGHTS FROM A CENTRAL BANK CREATED PURSUANT TO SECTION SIXTY-FOUR-E OF THIS ARTICLE; (E) ANY PROCEEDS RECEIVED BY THE LOCAL GOVERNMENT FROM THE SALE OF AFFORDABLE HOUSING PRODUCED FROM REVENUES OF THE FUND; (F) THE REPAYMENT OF ANY LOANS ISSUED FROM PROCEEDS OF THE FUND; (G) ANY GIFTS OF INTERESTS IN LAND OR FUNDS; (H) ANY STATE OR FEDERAL GRANTS RECEIVED BY THE TOWN FOR PROVIDING AFFORDABLE HOMES; AND (I) FUNDS RECEIVED BY THE TOWN FROM FEES PAID TO THE TOWN PURSUANT TO AN INCLUSIONARY ZONING LAW WHERE AUTHORIZED BY THE LEGISLATURE. INTEREST ACCRUED BY MONIES DEPOSITED INTO THE FUND SHALL BE CREDITED TO THE FUND. IN NO EVENT SHALL MONIES DEPOSITED INTO THE FUND BE TRANSFERRED TO ANY OTHER ACCOUNT. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE FINANCING IN WHOLE OR IN PART, PURSUANT TO THE LOCAL FINANCE LAW, OF ANY PROJECT OR PURPOSE AUTHORIZED PURSUANT TO THIS SECTION. MONIES FROM THE FUND MAY BE UTILIZED TO REPAY INDEBTEDNESS OR OBLIGATIONS INCURRED PURSUANT TO THE LOCAL FINANCE LAW CONSISTENT WITH EFFECTUATING THE PURPOSES OF THIS SECTION.

3. PURPOSES OF THE FUND. THE PROCEEDS OF THE FUND ESTABLISHED PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL BE UTILIZED FOR THE FOLLOWING PURPOSES:

(A) THE PROVISION OF NO-INTEREST OR LOW-INTEREST LOANS TO ELIGIBLE RESIDENTS OF THE TOWN FOR THE PURCHASE OF A FIRST HOME;

(B) THE ACTUAL PRODUCTION OF COMMUNITY HOUSING FOR SALE TO ELIGIBLE INDIVIDUALS BY THE TOWN;

(C) THE ACTUAL PRODUCTION OF COMMUNITY HOUSING FOR SALE TO ELIGIBLE INDIVIDUALS IN CONJUNCTION WITH A PUBLIC/PRIVATE PARTNERSHIP, WHERE THE PRIVATE PARTNER AGREES TO COMPLY WITH THE PROFIT GUIDELINES OF THE NEW YORK STATE AFFORDABLE HOUSING CORPORATION;

(D) THE ACTUAL PRODUCTION AND MAINTENANCE OF RENTAL HOUSING FOR RENT TO ELIGIBLE INDIVIDUALS EITHER BY THE TOWN, THE TOWN HOUSING AUTHORITY, OR IN CONJUNCTION WITH A PUBLIC/PRIVATE PARTNERSHIP, WHERE THE PRIVATE PARTNER AGREES TO COMPLY WITH THE PROFIT GUIDELINES OF THE NEW YORK STATE AFFORDABLE HOUSING CORPORATION;

(E) THE REHABILITATION OF EXISTING BUILDINGS AND STRUCTURES IN THE TOWN FOR THE PURPOSE OF CONVERSION TO COMMUNITY HOUSING FOR SALE OR RENTAL TO ELIGIBLE INDIVIDUALS;

(F) THE PROVISION OF HOUSING COUNSELING SERVICES BY NOT-FOR-PROFIT CORPORATIONS WHO ARE AUTHORIZED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO PROVIDE SUCH SERVICES; AND

(G) THE PROVISION OF EDUCATION IMPACT PAYMENTS TO SCHOOL DISTRICTS AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF THIS SECTION.

FOR THE PURPOSES OF THIS SUBDIVISION, ELIGIBLE EXPENSES RELATING TO THE PRODUCTION OF COMMUNITY HOUSING AND THE REHABILITATION OF EXISTING BUILDINGS AND STRUCTURES UNDER THE FUND SHALL INCLUDE BUT NOT BE LIMITED TO LAND ACQUISITION, PLANNING, ENGINEERING, CONSTRUCTION COSTS, AND OTHER HARD AND SOFT COSTS DIRECTLY RELATED TO THE CONSTRUCTION, REHABILITATION, PURCHASE OR RENTAL OF HOUSING PURSUANT TO THIS SECTION. ALL REVENUES RECEIVED BY THE TOWN FROM THE SALE OR RENTAL OF COMMUNITY HOMES, OR THE REPAYMENT OF LOANS SHALL BE DEPOSITED IN THE FUND.

4. ADVISORY BOARD ESTABLISHED. THE TOWN BOARD OF ANY TOWN IN THE PECONIC BAY REGION WHICH HAS ESTABLISHED A COMMUNITY HOUSING OPPORTUNITY FUND PURSUANT TO THIS SECTION SHALL CREATE AN ADVISORY BOARD TO REVIEW AND MAKE RECOMMENDATIONS REGARDING THE TOWN'S COMMUNITY HOUSING PROGRAM. SUCH BOARD SHALL CONSIST OF NOT LESS THAN SEVEN NOR MORE THAN FIFTEEN LEGAL RESIDENTS OF THE MUNICIPALITY WHO SHALL SERVE WITHOUT COMPENSATION. NO MEMBER OF THE LOCAL LEGISLATIVE BODY SHALL SERVE ON THE BOARD. THE BOARD SHALL INCLUDE A REPRESENTATIVE OF: (A) THE BUILDING INDUSTRY; (B) THE REAL ESTATE INDUSTRY; (C) THE BANKING INDUSTRY; AND THREE REPRESENTATIVES OF LOCAL HOUSING ADVOCACY OR HUMAN SERVICES ORGANIZATIONS. WHERE A VILLAGE OR VILLAGES, LOCATED WITHIN THE TOWN, HAVE ELECTED TO PARTICIPATE IN THE FUND, AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION, THE BOARD SHALL INCLUDE AT LEAST ONE RESIDENT OF A PARTICIPATING VILLAGE OR VILLAGES. WHERE AN INDIAN NATION IS LOCATED WITHIN THE BOUNDARIES OF A TOWN, THE BOARD SHALL INCLUDE AT LEAST ONE MEMBER FROM SUCH NATION. THE BOARD SHALL ACT IN AN ADVISORY CAPACITY TO THE TOWN BOARD.

5. ADOPTION OF HOUSING PLAN. (A) BEFORE A TOWN MAY ESTABLISH THE FUND, THE TOWN BOARD SHALL FIRST ADOPT A TOWN HOUSING PLAN WHICH ESTABLISHES AN IMPLEMENTATION PLAN FOR THE PROVISION OF COMMUNITY HOUSING OPPORTUNITIES BY THE FUND, AND A LOCAL LAW IMPLEMENTING SAID PLAN. SUCH PLAN SHALL ADHERE TO THE FOLLOWING SMART GROWTH PRINCIPLES:

(1) PUBLIC INVESTMENT. TO ACCOUNT FOR AND MINIMIZE SOCIAL, ECONOMIC, AND ENVIRONMENTAL COSTS OF NEW DEVELOPMENT, INCLUDING INFRASTRUCTURE COSTS SUCH AS TRANSPORTATION, SEWERS, AND WASTEWATER TREATMENT, WATER, SCHOOLS, RECREATION, AND LOSS OF OPEN SPACE AND AGRICULTURAL LAND;

(2) DEVELOPMENT. TO ENCOURAGE DEVELOPMENT IN AREAS WHERE TRANSPORTATION, WATER, AND SEWAGE INFRASTRUCTURE ARE AVAILABLE OR PRACTICAL;

(3) CONSERVATION. TO PROTECT, PRESERVE, AND ENHANCE THE STATE'S RESOURCES, INCLUDING AGRICULTURAL LAND, FORESTS, SURFACE WATERS, GROUNDWATER, RECREATION AND OPEN SPACE, SCENIC AREAS, AND SIGNIFICANT HISTORIC AND ARCHEOLOGICAL SITES;

(4) COORDINATION. TO PROMOTE COORDINATION OF STATE AND LOCAL GOVERNMENT DECISIONS AND COOPERATION AMONG COMMUNITIES TO WORK TOWARD THE MOST EFFICIENT, PLANNED AND COST-EFFECTIVE DELIVERY OF GOVERNMENT SERVICES BY, AMONG OTHER MEANS, FACILITATING COOPERATIVE AGREEMENTS AMONG ADJACENT COMMUNITIES, AND TO COORDINATE PLANNING TO ENSURE COMPATIBILITY OF ONE'S COMMUNITY DEVELOPMENT WITH DEVELOPMENT OF NEIGHBORING COMMUNITIES;

(5) COMMUNITY DESIGN. TO STRENGTHEN COMMUNITIES THROUGH DEVELOPMENT AND REDEVELOPMENT STRATEGIES THAT INCLUDE INTEGRATION OF ALL INCOME AND

AGE GROUPS, MIXED LAND USES, AND COMPACT DEVELOPMENT, TRADITIONAL NEIGHBORHOOD DEVELOPMENT, PLANNED UNIT DEVELOPMENT, OPEN SPACE DISTRICTS, DOWNTOWN REVITALIZATION, BROWNFIELD REDEVELOPMENT, ENHANCED BEAUTY IN PUBLIC SPACES, AND DIVERSE AND COMMUNITY HOUSING IN CLOSE PROXIMITY TO PLACES OF EMPLOYMENT, RECREATION, AND COMMERCIAL DEVELOPMENT;

(6) TRANSPORTATION. TO PROVIDE TRANSPORTATION CHOICES, INCLUDING INCREASING PUBLIC TRANSIT AND ALTERNATIVE MODES OF TRANSPORTATION, IN ORDER TO REDUCE AUTOMOBILE DEPENDENCY, TRAFFIC CONGESTION, AND AUTOMOBILE POLLUTION;

(7) CONSISTENCY. TO INSURE PREDICTABILITY IN BUILDING AND LAND USE CODES;

(8) COMMUNITY COLLABORATION. TO PROVIDE FOR AND ENCOURAGE LOCAL GOVERNMENTS TO DEVELOP, THROUGH A COLLABORATIVE COMMUNITY-BASED EFFORT, SMART GROWTH PLANS THAT INCLUDE LONG TERM LAND USE AND PERMIT PREDICTABILITY AND COORDINATION, EFFICIENT DECISION MAKING AND PLANNING IMPLEMENTATION.

(B) SUCH PLAN MAY INCLUDE THE ESTABLISHMENT OF A MAP OR MAPS THAT DELINEATE THE HOUSING IMPLEMENTATION RECOMMENDATIONS PROPOSED BY THE TOWN.

(C) THE PLAN AND THE LOCAL LAW IMPLEMENTING THE PLAN SHALL NOT BE ADOPTED UNTIL AFTER A PUBLIC HEARING HAS BEEN HELD BY THE TOWN BOARD. SUCH PLAN SHALL BE UPDATED AT LEAST ONCE EVERY FIVE YEARS. SUCH PLAN AND LOCAL LAW SHALL BE ADOPTED AT LEAST SIXTY DAYS BEFORE THE MANDATORY REFERENDUM REQUIRED BY SUBDIVISION SEVEN OF THIS SECTION.

(D) THE TOWN HOUSING PLAN SHALL BE AN ELEMENT OF THE TOWN'S COMPREHENSIVE PLAN.

(E) SUCH HOUSING PLAN SHALL ALSO PROVIDE FOR INCOME AND OTHER ELIGIBILITY REQUIREMENTS FOR COMMUNITY HOUSING, INCLUDING ANY ELIGIBILITY PREFERENCE THAT MAY BE GIVEN BASED UPON RESIDENCY OR OTHER CRITERIA. SUCH PLAN SHALL ALSO PROVIDE FOR THE LEGAL MECHANISM THAT WILL BE EMPLOYED TO MAINTAIN THE HOUSING STOCK CREATED PURSUANT TO THIS SECTION AT COMMUNITY LEVELS. THE RESALE OF COMMUNITY HOUSING TO THE PUBLIC FOR OCCUPANCY CREATED PURSUANT TO THIS SECTION TO OTHER THAN INCOME ELIGIBLE HOUSEHOLDS SHALL BE PROHIBITED.

(F) SUCH HOUSING PLAN SHALL ALSO PROVIDE FOR THE EQUITABLE DISTRIBUTION OF COMMUNITY HOUSING OPPORTUNITIES AMONG ALL THE HAMLETS AND COMMUNITIES OF THE TOWN. THE PLAN SHALL INSURE THAT NO HAMLET OR COMMUNITY IS SITED FOR AN UNDUE CONCENTRATION OF COMMUNITY HOUSING OPPORTUNITIES THAT WOULD SUBSTANTIALLY ALTER THE CHARACTER OF THE HAMLET OR COMMUNITY. IN DETERMINING EQUITABLE DISTRIBUTION OF COMMUNITY HOUSING OPPORTUNITIES, EXISTING COMMUNITY HOUSING OPPORTUNITIES IN A HAMLET OR COMMUNITY SHALL BE CONSIDERED.

6. VILLAGE AND INDIAN NATION PARTICIPATION. (A) THE PARTICIPATION OF ANY VILLAGE OR INDIAN NATION IN THE COMMUNITY HOUSING OPPORTUNITY PROGRAM AUTHORIZED BY THIS SECTION SHALL BE AT THE OPTION OF THE VILLAGE OR INDIAN NATION. IN ORDER TO PARTICIPATE, A VILLAGE OR INDIAN NATION SHALL PASS A RESOLUTION OPTING INTO THE PROGRAM AND SHALL SUBMIT SAID RESOLUTION TO THE TOWN BOARD.

(B) WHERE A VILLAGE OR INDIAN NATION OPTS TO PARTICIPATE PURSUANT TO THIS SUBDIVISION, AN INTERGOVERNMENTAL AGREEMENT SHALL BE EXECUTED PURSUANT TO ARTICLE FIVE-G OF THE GENERAL MUNICIPAL LAW OR OTHER APPLICABLE LEGAL AUTHORITY, IN ORDER TO ESTABLISH THE RIGHTS AND RESPONSIBILITIES OF EACH GOVERNMENT REGARDING COMMUNITY HOUSING OPPORTUNITIES.

7. MANDATORY REFERENDUM. THE LOCAL LAW OR LAWS ADOPTING THE HOUSING PLAN AND ESTABLISHING THE COMMUNITY HOUSING OPPORTUNITY FUND SHALL BE SUBJECT TO A MANDATORY REFERENDUM. SUCH LOCAL LAW OR LAWS SHALL ONLY

BECOME EFFECTIVE UPON THE ADOPTION OF SAID REFERENDUM BY THE ELECTORS OF THE TOWN.

S 4. Subdivision 10 of section 64-e of the town law, as amended by chapter 373 of the laws of 2008, is amended to read as follows:

10. [Rights] EXCEPT AS PROVIDED FOR HEREIN, RIGHTS or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the legislature. Nothing in this section shall preclude a town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by a town acquired pursuant to this section, where said sale is made by a central bank created by a town, pursuant to a transfer of development rights program established by a town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund OR THE COMMUNITY HOUSING OPPORTUNITY FUND PURSUANT TO SECTION SIXTY-FOUR-K OF THIS ARTICLE.

S 5. Applicability. Nothing shall preclude a town from transferring development rights acquired after the effective date of chapter 114 of the laws of 1998 but before the effective date of this section into a central bank.

S 6. Severability clause. If any provision of this act or application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of the act, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered.

S 7. This act shall take effect immediately.