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I N S E N A T E

June 13, 2012

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to special groundwater and surface water protection areas

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

- 1 Section 1. Section 55-0113 of the environmental conservation law, as  
2 added by chapter 628 of the laws of 1987, subdivision 8 as added by  
3 chapter 502 of the laws of 2006, is amended to read as follows:  
4 S 55-0113. Special groundwater AND SURFACE WATER protection areas; Long  
5 Island designation.
- 6 1. Nine areas shall be designated for the purposes of this article as  
7 special groundwater protection areas. They are identified as follows:  
8 (a) the North Hills area of the town of North Hempstead, Nassau coun-  
9 ty;  
10 (b) the area of the Northeastern villages of the town of Oyster Bay,  
11 Nassau county;  
12 (c) the Woodbury road-West Pulaski road area, town of Huntington,  
13 Suffolk county;  
14 (d) the West Hills area of the town of Huntington, Suffolk county;  
15 (e) the Oak Brush Plains of the towns of Babylon and Huntington,  
16 Suffolk county;  
17 (f) the Setauket Pine Barrens, town of Brookhaven, Suffolk county;  
18 (g) the Central Pine Barrens of the towns of Brookhaven, Riverhead and  
19 Southampton, Suffolk county;  
20 (h) the South Fork Morainal Forest of the towns of Southampton and  
21 East Hampton, Suffolk county; and  
22 (i) the Hither Hills area of the town of East Hampton, Suffolk county.
- 23 2. THREE AREAS SHALL BE DESIGNATED FOR THE PURPOSES OF THIS ARTICLE AS  
24 SPECIAL SURFACE WATER PROTECTION AREAS. THEY ARE IDENTIFIED AS FOLLOWS:  
25 (A) THE PECONIC ESTUARY WATERSHED AS DEFINED IN SUBDIVISION SIX OF  
26 SECTION 57-0203 OF THIS CHAPTER.  
27 (B) THE SOUTH SHORE ESTUARY RESERVE WATERSHED AS DEFINED IN SUBDIVI-  
28 SION FOUR OF SECTION NINE HUNDRED SIXTY-TWO OF THE EXECUTIVE LAW.

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

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1 (C) THE LONG ISLAND SOUND WATERSHED INCLUDING ONLY TOWNS, VILLAGES,  
2 AND COUNTIES ADJOINING THE LONG ISLAND SOUND.

3 3. Such areas identified for Long Island in this section shall be  
4 addressed concurrently as a single planning project in order to insure  
5 consistency and uniformity in the development of a management plan that  
6 recognizes the regional importance of the special groundwater AND  
7 SURFACE WATER protection areas.

8 [3.] 4. The preliminary boundaries of the special groundwater  
9 protection areas designated in subdivision one of this section shall be  
10 those identified in the state groundwater management plan except for  
11 said areas designated in paragraphs (a) and (b) of subdivision one of  
12 this section which shall be the same as those areas adopted by the  
13 Nassau County Board of Health pursuant to article ten of the Nassau  
14 County Public Health Ordinance on December twelfth, nineteen hundred  
15 eighty-four. Final boundaries shall be determined on the basis of infor-  
16 mation developed in accordance with the requirements of section 55-0115  
17 of this article.

18 [4.] 5. Other areas not identified in this section can be petitioned  
19 for according to the guidelines set forth in section 55-0109 of this  
20 article.

21 [5.] 6. The Long Island [regional] WATER planning board is designated  
22 as the planning entity for the nine special groundwater protection areas  
23 herein identified on Long Island, and is authorized to carry out the  
24 planning work specified in this article. THE LONG ISLAND WATER PLANNING  
25 BOARD SHALL CONSIST OF THE COMMISSIONER (OR HIS OR HER DESIGNEE), THE  
26 NASSAU AND SUFFOLK COUNTY EXECUTIVES, AND THE TOWN SUPERVISORS AND  
27 VILLAGE MAYORS FROM EACH OF THE SPECIAL GROUNDWATER AND SURFACE WATER  
28 PROTECTION AREAS. THE COMMISSIONER OR HIS OR HER DESIGNEE SHALL SERVE AS  
29 CHAIR.

30 [6.] 7. An advisory group to be known as the "special groundwater AND  
31 SURFACE WATER protection area advisory council" shall be established.  
32 The voting membership shall consist of representatives of the following  
33 organizations: one member from the Nassau county department of health;  
34 one member from the Nassau county department of public works; one member  
35 from the Nassau county planning commission; two members from the Suffolk  
36 county department of health services; one member from the New York state  
37 department of environmental conservation; one member from the New York  
38 state department of health; [two members from the New York state legis-  
39 lative commission on water resource needs of Long Island;] two members  
40 from conservation organizations having property or other interests in  
41 one or more of the special groundwater protection areas[; and a member  
42 from each town which contains part or all of a special groundwater  
43 protection area] AND/OR SURFACE WATER PROTECTION AREAS. The special  
44 groundwater AND SURFACE WATER protection area advisory council shall  
45 serve as an advisory group to the Long Island [regional] WATER planning  
46 board and shall assist in the development, review, and implementation of  
47 the management plan.

48 [7.] 8. The Long Island [regional] WATER planning board shall submit  
49 an outline of the plan of work designed to complete the requirements of  
50 sections 55-0115 and 55-0117 of this article, acceptable to the commis-  
51 sioner and a budget request, therefor. SUCH REQUEST SHALL BE SUBMITTED  
52 NO LATER THAN DECEMBER THIRTY-FIRST OF EACH YEAR.

53 [8. No municipality located within a special groundwater protection  
54 area designated in paragraph (a) of subdivision one of this section  
55 shall use public funds to acquire land within such special groundwater  
56 protection area being used as a recreational facility or open space at

1 the time of proposed acquisition unless such land is being offered for  
2 sale or a change of use for such land is proposed by the owner thereof.]

3 S 2. Section 55-0115 of the environmental conservation law, as added  
4 by chapter 628 of the laws of 1987, is amended to read as follows:

5 S 55-0115. Comprehensive management plan; contents.

6 The designated planning entity shall prepare the plan for the special  
7 groundwater protection area. The plan shall be designed to ensure the  
8 non-degradation AND RESTORATION of [the] high quality [of] groundwater  
9 recharged within the special groundwater protection area AND SPECIAL  
10 SURFACE WATER PROTECTION AREAS. Where local plans already exist which  
11 effectuate the goals of this article, such local plans shall be evalu-  
12 ated and incorporated as is appropriate into the work of the planning  
13 entity. Such plan shall include but not be limited to:

14 1. A determination of the quality of the existing groundwater  
15 recharged through said special groundwater protection area AND SAID  
16 SPECIAL SURFACE WATER PROTECTION AREA, the natural recharge capabilities  
17 of the special groundwater protection area watershed AND SPECIAL SURFACE  
18 WATER PROTECTION AREAS and the dependence of any natural ecosystems in  
19 the special groundwater protection area AND SPECIAL SURFACE WATER  
20 PROTECTION AREAS on the water quality and natural recharge capabilities  
21 of said area;

22 2. An identification of all known existing and potential point and  
23 non-point sources of groundwater degradation;

24 3. Development of specific ENFORCEABLE watershed rules and regulations  
25 pursuant to section eleven hundred of the public health law, AND ARTICLE  
26 FIFTEEN OF THIS CHAPTER, which are designed to accomplish the purposes  
27 of this article;

28 4. A map showing the detailed boundary of the special groundwater AND  
29 SURFACE WATER protection area or areas as well as a precise written  
30 description of such boundaries;

31 5. A resource assessment which determines the amount and type of human  
32 development and activity which the ecosystem can sustain while still  
33 maintaining existing ground and surface water quality and protecting  
34 unique ecological features;

35 6. The identification and proposal of limits on federal, state and  
36 local government financially assisted activities and projects which,  
37 directly or indirectly, may contribute, in any way whatsoever, to any  
38 degradation of such groundwater or any loss of natural surface and  
39 subsurface infiltration or purification capability of the special  
40 groundwater protection area watershed;

41 7. Development of a comprehensive statement of land use management as  
42 it pertains to the maintenance, RESTORATION, and enhancement of ground-  
43 water quality and quantity;

44 8. Proposal of limits on land uses AND WASTEWATER INFRASTRUCTURE AND  
45 MANAGEMENT PRACTICES that might have an adverse impact on water quality  
46 and/or recharge capabilities in the special groundwater protection area  
47 AND SURFACE WATER PROTECTION AREAS;

48 9. Consideration and proposal of specific techniques, including, but  
49 not limited to: clustering, large lot zoning, purchase, exchange or  
50 donation of conservation easements or development rights, and other  
51 innovative measures sufficient to achieve the objectives of this  
52 section;

53 10. Designation of specific areas within special groundwater  
54 protection areas AND SURFACE WATER PROTECTION AREAS suitable and appro-  
55 priate for public acquisition; and

1 11. A program for local governmental implementation of the comprehen-  
2 sive management plan described in this subdivision in a manner that will  
3 insure the continued, uniform, consistent protection of this area in  
4 accord with the purposes of this article.

5 S 3. Section 55-0117 of the environmental conservation law, as added  
6 by chapter 628 of the laws of 1987, subdivisions 5 and 6 as amended by  
7 chapter 238 of the laws of 1991, is amended to read as follows:

8 S 55-0117. Comprehensive management plan; approval.

9 1. The planning entity shall:

10 (a) consult with appropriate officials of any local, state or federal  
11 agency which has jurisdiction over lands and waters within the area;

12 (b) consult with the officials of any municipality which has jurisdic-  
13 tion over lands and waters within areas designated [or proposed] as  
14 special groundwater protection areas OR SPECIAL SURFACE WATER PROTECTION  
15 AREAS;

16 (c) consult with interested professional, scientific and citizens'  
17 organizations;

18 (d) consult with citizen's advisory committees;

19 (e) transmit any draft and final plan to all affected municipalities  
20 for review and comment; and

21 (f) conduct public hearings at places within the area, and at such  
22 other places as may be appropriate, for the purpose of providing inter-  
23 ested persons with an opportunity to express their views with respect to  
24 matters covered by the plan.

25 2. The plan shall be submitted to the commissioner. The plan shall be  
26 accompanied by a transmittal letter in which the planning entity certi-  
27 fies that:

28 (a) the plan when implemented will achieve [its stated water quality  
29 objectives] AN AMBIENT GROUNDWATER STANDARD OF TWO MILLIGRAMS PER LITER  
30 FOR NITROGEN and protect the ecological values of the special groundwa-  
31 ter protection area which are significant for maintenance of water qual-  
32 ity;

33 (b) the plan requires the exercise of land use and zoning responsibil-  
34 ities to the greatest extent practicable to regulate the use of land and  
35 water resources in a manner consistent with the purposes of this arti-  
36 cle;

37 (c) the planning entity has afforded adequate opportunity, including  
38 public hearings, for public governmental involvement in the preparation  
39 and review of the plan, and whether such review and comment thereon were  
40 considered in the plan; and

41 (d) the extent to which adequate assurances have been received from  
42 appropriate local officials that the recommended implementation program  
43 identified in the plan will be initiated within a reasonable time after  
44 the date of approval of the plan and such program will insure effective  
45 implementation of the local aspects of the plan.

46 3. The commissioner shall review the plan and within ninety days  
47 certify that the plan conforms with all applicable state laws, official  
48 rules and regulations, state water resource management plans, and where  
49 submitted, the nominating petition as defined in section 55-0109 of this  
50 article. As part of the review and certification process, the commis-  
51 sioner shall also certify the boundaries.

52 4. If the commissioner finds that the plan is still not in compliance  
53 with applicable state law, official rules and regulations, and state  
54 water resource management plans, after a second review, he shall with-  
55 hold approval of all outstanding planning entity claims for reimburse-  
56 ment pending satisfactory revision of the plan.

1 5. Upon certification of the plan and the boundaries, the identified  
2 area or areas are officially adopted by the commissioner as special  
3 groundwater protection areas AND/OR SURFACE WATER PROTECTION AREAS.

4 6. Upon adoption of the boundaries by the planning entity, the special  
5 groundwater AND SURFACE WATER protection areas shall be designated as  
6 critical environmental areas as defined by regulations pursuant to  
7 section 8-0113 of this chapter and an environmental impact statement  
8 shall be prepared pursuant to section 8-0109 of this chapter for any  
9 action found to have a significant impact upon such areas. Such state-  
10 ment shall meet the requirements of the most detailed environmental  
11 impact statement required by section 8-0109 of this chapter or by any  
12 rule or regulation promulgated pursuant to such section. Upon certif-  
13 ication of the plan by the commissioner, such statement shall include a  
14 detailed statement of the effects of any proposed action on, and its  
15 consistency with, the comprehensive management plan of the special  
16 groundwater protection area AND SURFACE WATER PROTECTION AREA program,  
17 as implemented by the commissioner pursuant to this article.

18 S 4. Section 55-0119 of the environmental conservation law, as added  
19 by chapter 546 of the laws of 2001, is amended to read as follows:

20 S 55-0119. Local land use regulation within a special groundwater  
21 [protection area] AND/OR SPECIAL SURFACE WATER PROTECTION  
22 AREAS.

23 Any land use regulation enacted by any COUNTY, town or village located  
24 within a special groundwater protection area AND/OR SPECIAL SURFACE  
25 WATER PROTECTION AREA which includes a definition of "open space" must  
26 consider the impact of such definition on the water quality and/or  
27 recharge capabilities of the area. Any such definition of "open space"  
28 may also consider other purposes of open space, including, but not  
29 limited to, protection of habitat, farmland, forest, air quality, view  
30 shed protection and recreation. Provided however, that any definition of  
31 open space that allows for or includes recreational uses, must provide  
32 clear guidance as to which recreational uses, improvements or facilities  
33 serve the purpose of protecting water quality and/or recharge capabili-  
34 ties. "Land use regulation" shall mean an ordinance or local law enacted  
35 by a municipality with responsibility for zoning and includes any  
36 zoning, subdivision, special use permit or site plan regulation or any  
37 other regulation which prescribes the appropriate use of property, or  
38 scale, location and intensity of development.

39 S 5. This act shall take effect on the ninetieth day after it shall  
40 have become a law.