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

7670

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:

Section 1. Section 55-0113 of the environmental conservation law, as added by chapter 628 of the laws of 1987, subdivision 8 as added by chapter 502 of the laws of 2006, is amended to read as follows:

S 55-0113. Special groundwater AND SURFACE WATER protection areas; Long Island designation.

1. Nine areas shall be designated for the purposes of this article as special groundwater protection areas. They are identified as follows:

(a) the North Hills area of the town of North Hempstead, Nassau county;

(b) the area of the Northeastern villages of the town of Oyster Bay, Nassau county;

(c) the Woodbury road-West Pulaski road area, town of Huntington, Suffolk county;

(d) the West Hills area of the town of Huntington, Suffolk county;

(e) the Oak Brush Plains of the towns of Babylon and Huntington, Suffolk county;

(f) the Setauket Pine Barrens, town of Brookhaven, Suffolk county;

(g) the Central Pine Barrens of the towns of Brookhaven, Riverhead and Southampton, Suffolk county;

(h) the South Fork Morainal Forest of the towns of Southampton and East Hampton, Suffolk county; and

(i) the Hither Hills area of the town of East Hampton, Suffolk county.

2. THREE AREAS SHALL BE DESIGNATED FOR THE PURPOSES OF THIS ARTICLE AS SPECIAL SURFACE WATER PROTECTION AREAS. THEY ARE IDENTIFIED AS FOLLOWS:

(A) THE PECONIC ESTUARY WATERSHED AS DEFINED IN SUBDIVISION SIX OF SECTION 57-0203 OF THIS CHAPTER.

(B) THE SOUTH SHORE ESTUARY RESERVE WATERSHED AS DEFINED IN SUBDIVISION 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.

LBD16140-01-2

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

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

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

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

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

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

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

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

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

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

S 55-0115. Comprehensive management plan; contents.

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

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

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

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

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

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

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

7. Development of a comprehensive statement of land use management as it pertains to the maintenance, RESTORATION, and enhancement of groundwater quality and quantity;

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

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

10. Designation of specific areas within special groundwater protection areas AND SURFACE WATER PROTECTION AREAS suitable and appropriate for public acquisition; and

11. A program for local governmental implementation of the comprehensive management plan described in this subdivision in a manner that will insure the continued, uniform, consistent protection of this area in accord with the purposes of this article.

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

S 55-0117. Comprehensive management plan; approval.

1. The planning entity shall:

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

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

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

(d) consult with citizen's advisory committees;

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

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

2. The plan shall be submitted to the commissioner. The plan shall be accompanied by a transmittal letter in which the planning entity certifies that:

(a) the plan when implemented will achieve [its stated water quality objectives] AN AMBIENT GROUNDWATER STANDARD OF TWO MILLIGRAMS PER LITER FOR NITROGEN and protect the ecological values of the special groundwater protection area which are significant for maintenance of water quality;

(b) the plan requires the exercise of land use and zoning responsibilities to the greatest extent practicable to regulate the use of land and water resources in a manner consistent with the purposes of this article;

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

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

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

4. If the commissioner finds that the plan is still not in compliance with applicable state law, official rules and regulations, and state water resource management plans, after a second review, he shall withhold approval of all outstanding planning entity claims for reimbursement pending satisfactory revision of the plan.

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

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

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

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

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

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