

1047

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. SWEENEY, WEISENBERG, THIELE -- read once and referred to the Committee on Environmental Conservation

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:

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

LBD03491-01-3

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

3 (B) THE SOUTH SHORE ESTUARY RESERVE WATERSHED AS DEFINED IN SUBDIVI-
4 SION FOUR OF SECTION NINE HUNDRED SIXTY-TWO OF THE EXECUTIVE LAW.

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

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

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

22 [4.] 5. Other areas not identified in this section can be petitioned
23 for according to the guidelines set forth in section 55-0109 of this
24 article.

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

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

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

1 [8. No municipality located within a special groundwater protection
2 area designated in paragraph (a) of subdivision one of this section
3 shall use public funds to acquire land within such special groundwater
4 protection area being used as a recreational facility or open space at
5 the time of proposed acquisition unless such land is being offered for
6 sale or a change of use for such land is proposed by the owner thereof.]

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

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

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

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

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

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

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

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

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

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

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

52 9. Consideration and proposal of specific techniques, including, but
53 not limited to: clustering, large lot zoning, purchase, exchange or
54 donation of conservation easements or development rights, and other
55 innovative measures sufficient to achieve the objectives of this
56 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

1 water resource management plans, after a second review, he shall with-
2 hold approval of all outstanding planning entity claims for reimburse-
3 ment pending satisfactory revision of the plan.

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

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

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

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

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

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