

S. 5324

A. 7471

2015-2016 Regular Sessions

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

May 13, 2015

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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 the Peconic Bay community preservation fund and chapter 114 of the laws of 1998 amending the town law and other laws relating to authorizing certain towns in the Peconic Bay region to establish community preservation funds, in relation to extending the effective date thereof

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

1     Section 1. Section 64-e of the town law, as amended by chapter 373 of  
2     the laws of 2008, subdivision 3 as amended by chapter 330 of the laws of  
3     2011 and subdivision 4 as amended by chapter 423 of the laws of 2013, is  
4     amended to read as follows:  
5     S 64-e. Peconic Bay region community preservation funds. 1. As used in  
6     this section, the following words and terms shall have the following  
7     meanings:  
8     (a) "Peconic Bay region" means the towns of East Hampton, Riverhead,  
9     Shelter Island, Southampton and Southold.  
10    (b) "Community preservation" shall mean and include any of the  
11    purposes outlined in subdivision four of this section.  
12    (c) "Board" means the advisory board required pursuant to subdivision  
13    five of this section.  
14    (d) "Fund" means the community preservation fund created pursuant to  
15    subdivision two of this section.  
16    (E) "WATER QUALITY IMPROVEMENT PROJECT" MEANS: (1) WASTEWATER TREAT-  
17    MENT IMPROVEMENT PROJECTS; (2) NON-POINT SOURCE ABATEMENT AND CONTROL  
18    PROGRAM PROJECTS DEVELOPED PURSUANT TO SECTION ELEVEN-B OF THE SOIL AND

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

LBD071111-02-5

1 WATER CONSERVATION DISTRICTS LAW, TITLE 14 OF ARTICLE 17 OF THE ENVIRON-  
2 MENTAL CONSERVATION LAW, SECTION 1455B OF THE FEDERAL COASTAL ZONE  
3 MANAGEMENT ACT, OR ARTICLE FORTY-TWO OF THE EXECUTIVE LAW; (3) AQUATIC  
4 HABITAT RESTORATION PROJECTS; (4) POLLUTION PREVENTION PROJECTS, AND (5)  
5 THE OPERATION OF THE PECONIC BAY NATIONAL ESTUARY PROGRAM, AS DESIGNATED  
6 BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. SUCH PROJECTS  
7 SHALL HAVE AS THEIR PURPOSE THE IMPROVEMENT OF EXISTING WATER QUALITY TO  
8 MEET EXISTING SPECIFIC WATER QUALITY STANDARDS. PROJECTS WHICH HAVE AS A  
9 PURPOSE TO PERMIT OR ACCOMMODATE NEW GROWTH SHALL NOT BE INCLUDED WITHIN  
10 THIS DEFINITION.

11 (F) "WASTEWATER TREATMENT IMPROVEMENT PROJECT" MEANS THE PLANNING,  
12 DESIGN, CONSTRUCTION, ACQUISITION, ENLARGEMENT, EXTENSION, OR ALTERATION  
13 OF A WASTEWATER TREATMENT FACILITY, INCLUDING ALTERNATIVE SYSTEMS TO A  
14 SEWAGE TREATMENT PLANT OR TRADITIONAL SEPTIC SYSTEM, TO TREAT, NEUTRAL-  
15 IZE, STABILIZE, ELIMINATE OR PARTIALLY ELIMINATE SEWAGE OR REDUCE POLLU-  
16 TANTS IN TREATMENT FACILITY EFFLUENT, INCLUDING PERMANENT OR PILOT  
17 DEMONSTRATION WASTEWATER TREATMENT PROJECTS, OR EQUIPMENT OR FURNISHINGS  
18 THEREOF. STORMWATER COLLECTING SYSTEMS AND VESSEL PUMPOUT STATIONS SHALL  
19 ALSO BE INCLUDED WITHIN THE DEFINITION OF A WASTEWATER IMPROVEMENT  
20 PROJECT.

21 (G) "AQUATIC HABITAT RESTORATION PROJECT" MEANS THE PLANNING, DESIGN,  
22 CONSTRUCTION, MANAGEMENT, MAINTENANCE, RECONSTRUCTION, REVITALIZATION,  
23 OR REJUVENATION ACTIVITIES INTENDED TO IMPROVE WATERS OF THE STATE OF  
24 ECOLOGICAL SIGNIFICANCE OR ANY PART THEREOF, INCLUDING, BUT NOT LIMITED  
25 TO PONDS, BOGS, WETLANDS, BAYS, SOUNDS, STREAMS, RIVERS, OR LAKES AND  
26 SHORELINES THEREOF, TO SUPPORT A SPAWNING, NURSERY, WINTERING, MIGRATO-  
27 RY, NESTING, BREEDING, FEEDING, OR FORAGING ENVIRONMENT FOR FISH AND  
28 WILDLIFE AND OTHER BIOTA.

29 (H) "POLLUTION PREVENTION PROJECT" MEANS THE PLANNING, DESIGN,  
30 CONSTRUCTION, IMPROVEMENT, MAINTENANCE OR ACQUISITION OF FACILITIES,  
31 PRODUCTION PROCESSES, EQUIPMENT OR BUILDINGS OWNED OR OPERATED BY MUNI-  
32 CIPALITIES FOR THE REDUCTION, AVOIDANCE, OR ELIMINATION OF THE USE OF  
33 TOXIC OR HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR  
34 POLLUTANTS SO AS TO REDUCE RISKS TO PUBLIC HEALTH OR THE ENVIRONMENT,  
35 INCLUDING CHANGES IN PRODUCTION PROCESSES OR RAW MATERIALS; SUCH  
36 PROJECTS SHALL NOT INCLUDE INCINERATION, TRANSFER FROM ONE MEDIUM OF  
37 RELEASE OR DISCHARGE TO ANOTHER MEDIUM, OFF-SITE OR OUT-OF-PRODUCTION  
38 RECYCLING, END-OF-PIPE TREATMENT OR POLLUTION CONTROL.

39 (I) "STORMWATER COLLECTING SYSTEM" MEANS SYSTEMS OF CONDUITS AND ALL  
40 OTHER CONSTRUCTION, DEVICES, AND APPLIANCES APPURTENANT THERETO,  
41 DESIGNED AND USED TO COLLECT AND CARRY STORMWATER AND SURFACE WATER,  
42 STREET WASH, AND OTHER WASH AND DRAINAGE WATERS TO A POINT SOURCE FOR  
43 DISCHARGE.

44 (J) "VESSEL PUMPOUT STATION" MEANS A PROJECT FOR THE PLANNING, DESIGN,  
45 ACQUISITION OR CONSTRUCTION OF A PERMANENT OR PORTABLE DEVICE CAPABLE OF  
46 REMOVING HUMAN SEWAGE FROM A MARINE HOLDING TANK.

47 2. The town board of any town in the Peconic Bay region is authorized  
48 to establish by local law a community preservation fund pursuant to the  
49 provisions of this section. Deposits into the fund may include revenues  
50 of the local government from whatever source and shall include, at a  
51 minimum, all revenues from a tax imposed upon the transfer of real prop-  
52 erty interests in such town pursuant to article thirty-one-D of the tax  
53 law. The fund shall also be authorized to accept gifts of any such  
54 interests in land or of funds. Interest accrued by monies deposited into  
55 the fund shall be credited to the fund. In no event shall monies depos-  
56 ited in the fund be transferred to any other account. Nothing contained

1 in this section shall be construed to prevent the financing in whole or  
2 in part, pursuant to the local finance law, of any acquisition OR WATER  
3 QUALITY IMPROVEMENT PROJECT authorized pursuant to this section. Monies  
4 from the fund may be utilized to repay any indebtedness or obligations  
5 incurred pursuant to the local finance law consistent with effectuating  
6 the purposes of this section. Where a town finances an acquisition OR  
7 WATER QUALITY IMPROVEMENT PROJECT, in whole, or in part, pursuant to the  
8 local finance law, the resolution authorizing such indebtedness shall be  
9 accompanied by a report from the town supervisor demonstrating how said  
10 indebtedness will be repaid by the fund. Said report shall include an  
11 estimate of projected revenues of the fund during the period of indebt-  
12 edness. The report shall also provide an accounting of all other indebt-  
13 edness incurred against the fund to be repaid for the same period. The  
14 town board shall make findings by resolution that there will be suffi-  
15 cient revenue to repay such indebtedness in its entirety from the fund  
16 before authorizing such indebtedness. [A town in the Peconic Bay region  
17 may only adopt the local law authorized by this subdivision if it has  
18 incurred or authorized bonded indebtedness since nineteen hundred eighty  
19 for open space purposes equal to or greater than two hundred dollars per  
20 town resident. The number of residents shall be determined by the 1990  
21 U.S. Census. Said local law shall make a finding that the town has  
22 complied with the per resident financial commitment requirement of this  
23 subdivision.]

24 3. The purposes of the fund shall be exclusively, (a) to implement a  
25 plan for the preservation of community character as required by this  
26 section, (b) to acquire interests or rights in real property for the  
27 preservation of community character within the town including villages  
28 therein in accordance with such plan and in cooperation with willing  
29 sellers, (c) to establish a bank pursuant to a transfer of development  
30 rights program consistent with section two hundred sixty-one-a of this  
31 chapter, [and] (d) to provide a management and stewardship program for  
32 such interests and rights consistent with subdivisions nine and nine-a  
33 of this section and in accordance with such plan designed to preserve  
34 community character; provided that not more than ten percent of the fund  
35 shall be utilized for the management and stewardship program, AND (E) TO  
36 IMPLEMENT WATER QUALITY IMPROVEMENT PROJECTS IN ACCORDANCE WITH A PLAN  
37 TO PRESERVE COMMUNITY CHARACTER. A MAXIMUM OF TWENTY (20) PERCENT OF THE  
38 FUND MAY BE UTILIZED FOR THE IMPLEMENTATION OF WATER QUALITY IMPROVEMENT  
39 PROJECTS; PROVIDED THAT WHERE SUCH WATER QUALITY IMPROVEMENT FUNDS ARE  
40 UTILIZED FOR THE OPERATION OF THE PECONIC BAY NATIONAL ESTUARY PROGRAM,  
41 THE USE OF SUCH FUNDS SHALL ONLY BE UTILIZED TO MATCH FEDERAL, STATE,  
42 COUNTY, OR OTHER PUBLIC OR PRIVATE FUNDS ON A DOLLAR FOR DOLLAR BASIS,  
43 NOT TO EXCEED TEN (10) PERCENT OF THE ANNUAL AMOUNT APPROPRIATED FOR  
44 WATER QUALITY IMPROVEMENT PROJECTS. If the implementation of the commu-  
45 nity preservation project plan, adopted by a town board, as provided in  
46 subdivision six of this section, has been completed, and funds are no  
47 longer needed for the purposes outlined in this subdivision, then any  
48 remaining monies in the fund shall be applied to reduce any bonded  
49 indebtedness or obligations incurred to effectuate the purposes of this  
50 section.

51 3-a. Preliminary and incidental costs in connection with the acquisi-  
52 tion of interests or rights in real property, pursuant to subdivision  
53 three of this section, shall be deemed part of the cost of the acquisi-  
54 tion for which they were incurred. Such expenditures may include any  
55 administrative or other expenditures directly arising therefrom. No  
56 expenditure shall be charged to the fund, unless authorized by law. A

1 full accounting of such costs for each acquisition of land shall be  
2 provided to the town board.

3 4. Preservation of community character shall involve one or more of  
4 the following: (a) establishment of parks, nature preserves, or recre-  
5 ation areas; (b) preservation of open space, including agricultural  
6 lands; (c) preservation of lands of exceptional scenic value; (d) pres-  
7 ervation of fresh and saltwater marshes or other wetlands; (e) preserva-  
8 tion of aquifer recharge areas; (f) preservation of undeveloped beach-  
9 lands or shoreline including those at significant risk of coastal  
10 flooding due to projected sea level rise and future storms; (g) estab-  
11 lishment of wildlife refuges for the purpose of maintaining native  
12 animal species diversity, including the protection of habitat essential  
13 to the recovery of rare, threatened or endangered species; (h) preserva-  
14 tion of pine barrens consisting of such biota as pitch pine, and scrub  
15 oak; (i) preservation of unique or threatened ecological areas; (j)  
16 preservation of rivers and river areas in a natural, free-flowing condi-  
17 tion; (k) preservation of forested land; (l) preservation of public  
18 access to lands for public use including stream rights and waterways;  
19 (m) preservation of historic places and properties listed on the New  
20 York state register of historic places and/or protected under a municipi-  
21 pal historic preservation ordinance or law; and (n) undertaking any of  
22 the aforementioned in furtherance of the establishment of a greenbelt.  
23 PRESERVATION OF COMMUNITY CHARACTER SHALL ALSO INCLUDE THE PROTECTION  
24 AND IMPROVEMENT OF THE QUALITY OF ALL WATER RESOURCES.

25 5. The town board of any town in the Peconic Bay region which has  
26 established a community preservation fund shall create an advisory board  
27 to review and make recommendations on proposed acquisitions of interests  
28 in real property OR WATER QUALITY IMPROVEMENT PROJECTS using monies from  
29 the fund. Such board shall consist of five or seven legal residents of  
30 the municipality who shall serve without compensation. No member of the  
31 local legislative body shall serve on the board. A majority of the  
32 members of the board shall have demonstrated experience with conserva-  
33 tion [or] AND land preservation activities OR WATER QUALITY IMPROVEMENT  
34 ACTIVITIES. The board shall act in an advisory capacity to the town  
35 board. At least one member of the board shall be an active farmer.

36 6. The town board of any town in the Peconic Bay region which has  
37 established a community preservation fund shall, by local law, adopt a  
38 community preservation project plan. This plan shall list every project  
39 which the town plans to undertake pursuant to the community preservation  
40 fund. It shall include every parcel which is necessary to be acquired in  
41 the town in order to protect community character. Such plan shall  
42 provide for a detailed evaluation of all available land use alternatives  
43 to protect community character, including but not limited to: (a) fee  
44 simple acquisition, (b) zoning regulations, including density  
45 reductions, cluster development, and site plan and design requirements,  
46 (c) transfer of development rights, (d) the purchase of development  
47 rights, and (e) scenic and conservation easements. Said evaluation shall  
48 be as specific as practicable as to each parcel selected for inclusion  
49 in the plan. The plan shall establish the priorities for preservation,  
50 and shall include the preservation of farmland as its highest priority.  
51 SAID PLAN SHALL ALSO LIST EVERY WATER QUALITY IMPROVEMENT PROJECT WHICH  
52 THE TOWN PLANS TO UNDERTAKE PURSUANT TO THE COMMUNITY PRESERVATION FUND  
53 AND SHALL STATE HOW SUCH PROJECT WOULD IMPROVE EXISTING WATER QUALITY.  
54 PROJECTS WHICH HAVE AS THEIR PURPOSE THE ACCOMMODATION OF NEW GROWTH AS  
55 OPPOSED TO THE REMEDIATION OF WATER QUALITY SHALL NOT QUALIFY FOR FUND-  
56 ING UNDER THIS SECTION. Funds from the community preservation fund may

1 only be expended for projects which have been included in said plan.  
2 Said plan shall be updated not less than once every five years, but in  
3 no event until at least three years after the adoption of the original  
4 plan. A copy of the plan shall be filed with the commissioner of envi-  
5 ronmental conservation, the commissioner of agriculture and markets and  
6 the commissioner of the office of parks, recreation and historic preser-  
7 vation. Said plan shall be completed at least sixty days before the  
8 submission of the mandatory referendum required by section one thousand  
9 four hundred forty-nine-bb of the tax law. As part of, or in addition,  
10 to said community preservation fund project plan, each town board may  
11 also adopt a management and stewardship plan for interests or rights in  
12 real property acquired pursuant to this section. No monies from the fund  
13 shall be expended for management and stewardship, except as approved in  
14 said plan. Said plan may provide management and stewardship projects for  
15 up to a three year period and shall provide a description and estimated  
16 cost for each project. Said plan shall be approved and adopted by local  
17 law and may be updated from time to time at the discretion of the town  
18 board. Only management and stewardship projects permitted pursuant to  
19 subdivision nine-a of this section shall be eligible to be included in  
20 the plan.

21 7. The town board of any town in the Peconic Bay region which has  
22 established a community preservation fund pursuant to this section shall  
23 study and consider establishing a transfer of development rights program  
24 to protect community character as provided for by section two hundred  
25 sixty-one-a of this chapter. All provisions of such section two hundred  
26 sixty-one-a shall be complied with. If at any time during the life of  
27 the community preservation fund a transfer of development rights program  
28 is established, the town may utilize monies from the community preserva-  
29 tion fund in order to create and fund a central bank of the transfer of  
30 development rights program. If at any time during the life of the commu-  
31 nity preservation fund, a transfer of development rights program is  
32 repealed by the town, all monies from the central bank shall be returned  
33 to the community preservation fund.

34 8. No interests or rights in real property shall be acquired pursuant  
35 to this section until a public hearing is held as required by section  
36 two hundred forty-seven of the general municipal law; provided, however,  
37 that nothing herein shall prevent the town board from entering into a  
38 conditional purchase agreement before a public hearing is held. Any  
39 resolution of a town board approving an acquisition of land pursuant to  
40 this section, shall find that acquisition was the best alternative for  
41 the protection of community character of all the reasonable alternatives  
42 available to the town.

43 9. Lands acquired pursuant to this section shall be administered and  
44 managed in a manner which (a) allows public use and enjoyment in a  
45 manner compatible with the natural, scenic, historic and open space  
46 character of such lands; (b) preserves the native biological diversity  
47 of such lands; (c) with regard to open spaces, limits improvements to  
48 enhancing access for passive use of such lands such as nature trails,  
49 boardwalks, bicycle paths, and peripheral parking areas provided that  
50 such improvements do not degrade the ecological value of the land or  
51 threaten essential wildlife habitat; and (d) preserves cultural property  
52 consistent with accepted standards for historic preservation. In  
53 furthering the purposes of this section, the town may enter into agree-  
54 ments with corporations organized under the not-for-profit corporation  
55 law and engage in land trust activities to manage lands including less  
56 than fee interests acquired pursuant to the provisions of this section,

provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

9-a. (a) Except for interests or rights in real property acquired for historic preservation purposes, management and stewardship projects shall be only expended for (1) projects which promote the protection or enhancement of the natural, scenic, and open space character for which the interests or rights in real property were acquired, or (2) accessory uses related to the purpose for which the interests or rights in real property were acquired consistent with subdivision nine of this section, or (3) restoration of acquired real property to its natural state including the demolition of existing buildings and structures.

(b) In the case of interests or rights in real property acquired for historic preservation purposes, funds may be expended only for the restoration and rehabilitation of buildings and structures consistent with accepted standards for historic preservation.

(c) Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the fund.

(d) Any project funded pursuant to this subdivision must have a useful life of five years or more under section 11.00 of the local finance law.

(e) Any expenditure from the fund for a purpose other than that permitted, herein, shall be deemed to be prohibited.

10. 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.

11. Notwithstanding any provision of law to the contrary, towns may enter into intermunicipal agreements pursuant to article five-G of the general municipal law for the following purposes: (a) to jointly acquire interests or rights in real property, consistent with the purposes of this section, where the acquisition of such interests or rights promotes a regional public benefit for two or more towns pursuant to a regional plan,

(b) to establish an office or department among all five towns to render legal opinions and interpretations to facilitate the efficient and consistent administration of each fund created under this section,

(c) to provide for an independent financial audit of each town's fund,

1 (d) to hire employees necessary to implement the provisions of this  
2 section.

3 12. Each town shall annually commission an independent audit of the  
4 fund. The audit shall be conducted by an independent certified public  
5 accountant or an independent public accountant. Said audit shall be  
6 performed by a certified public accountant or an independent public  
7 accountant other than the one that performs the general audit of each  
8 town's finances. Such audit shall be an examination of the fund and  
9 shall determine whether the fund has been administered consistent with  
10 the provisions of this section and all other applicable provisions of  
11 state law. Said audit shall be initiated within sixty days of the close  
12 of the fiscal year of each town and shall be completed within one  
13 hundred twenty days of the close of the fiscal year. A copy of the audit  
14 shall be submitted annually to the state comptroller and the town clerk.  
15 A copy of the audit shall be made available to the public within thirty  
16 days of its completion. A notice of the completion of the audit shall be  
17 published in the official newspaper of the town and posted on the offi-  
18 cial sign board of the town within ten days of its filing with the town  
19 clerk. Said audit and notice shall also be posted on the internet site  
20 for the town. The cost of the audit may be a charge to the fund.

21 13. The cost of employees and independent contractors to implement the  
22 provisions of this section, may only be paid for by the fund where the  
23 duties and responsibilities of said employees and independent contrac-  
24 tors are directly dedicated to implementing the provisions of this  
25 section. Where such employees and independent contractors are not exclu-  
26 sively dedicated to implementing the provisions of this section, no more  
27 than the cost of the actual time expended directly dedicated to imple-  
28 menting the provisions of this section may be charged. Such costs shall  
29 be expressly identified in the town budget and any plan adopted pursuant  
30 to this section before funds for such costs may be expended. In addi-  
31 tion, such costs must be documented by a time accounting system, subject  
32 to audit. Costs relating to the activities of elected officials imple-  
33 menting the purposes of this section may not be a charge to the fund.

34 S 2. Where a town extends the provisions of article 31-D of the tax  
35 law in relation to the date of expiration of chapter 114 of the laws of  
36 1998 as authorized by section three of this act, or where a town adopts  
37 the provisions of section one of this act in relation to including water  
38 quality improvement projects under the definition of the preservation of  
39 community character, such action shall be implemented by local law  
40 subject to a mandatory referendum pursuant to section 23 of the munici-  
41 pal home rule law.

42 S 3. Section 5 of chapter 114 of the laws of 1998, amending the town  
43 law and other laws relating to authorizing certain towns in the Peconic  
44 Bay region to establish community preservation funds, as amended by  
45 chapter 391 of the laws of 2006, is amended to read as follows:

46 S 5. This act shall take effect immediately; provided that article  
47 31-D of the tax law, as added by section three of this act shall remain  
48 in full force and effect until December 31, [2030] 2050 when upon such  
49 date the provisions of such section three of this act shall expire and  
50 be deemed repealed, provided however, that the tax authorized by section  
51 three of this act shall not take effect before July 1, 1998.

52 S 4. This act shall take effect immediately.