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

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

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:

Section 1. Section 64-e of the town law, as amended by chapter 373 of the laws of 2008, subdivision 3 as amended by chapter 330 of the laws of 2011 and subdivision 4 as amended by chapter 423 of the laws of 2013, is amended to read as follows:

S 64-e. Peconic Bay region community preservation funds. 1. 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 preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(E) "WATER QUALITY IMPROVEMENT PROJECT" MEANS: (1) WASTEWATER TREATMENT IMPROVEMENT PROJECTS; (2) NON-POINT SOURCE ABATEMENT AND CONTROL 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.

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

(F) "WASTEWATER TREATMENT IMPROVEMENT PROJECT" MEANS THE PLANNING, DESIGN, CONSTRUCTION, ACQUISITION, ENLARGEMENT, EXTENSION, OR ALTERATION OF A WASTEWATER TREATMENT FACILITY, INCLUDING ALTERNATIVE SYSTEMS TO A SEWAGE TREATMENT PLANT OR TRADITIONAL SEPTIC SYSTEM, TO TREAT, NEUTRALIZE, STABILIZE, ELIMINATE OR PARTIALLY ELIMINATE SEWAGE OR REDUCE POLLUTANTS IN TREATMENT FACILITY EFFLUENT, INCLUDING PERMANENT OR PILOT DEMONSTRATION WASTEWATER TREATMENT PROJECTS, OR EQUIPMENT OR FURNISHINGS THEREOF. STORMWATER COLLECTING SYSTEMS AND VESSEL PUMPOUT STATIONS SHALL ALSO BE INCLUDED WITHIN THE DEFINITION OF A WASTEWATER IMPROVEMENT PROJECT.

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

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

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

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

2. The town board of any town in the Peconic Bay region is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-D of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in 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 acquisition OR WATER QUALITY IMPROVEMENT PROJECT authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section. Where a town finances an acquisition OR WATER QUALITY IMPROVEMENT PROJECT, in whole, or in part, pursuant to the local finance law, the resolution authorizing such indebtedness shall be accompanied by a report from the town supervisor demonstrating how said indebtedness will be repaid by the fund. Said report shall include an estimate of projected revenues of the fund during the period of indebtedness. The report shall also provide an accounting of all other indebtedness incurred against the fund to be repaid for the same period. The town board shall make findings by resolution that there will be sufficient revenue to repay such indebtedness in its entirety from the fund before authorizing such indebtedness. [A town in the Peconic Bay region may only adopt the local law authorized by this subdivision if it has incurred or authorized bonded indebtedness since nineteen hundred eighty for open space purposes equal to or greater than two hundred dollars per town resident. The number of residents shall be determined by the 1990 U.S. Census. Said local law shall make a finding that the town has complied with the per resident financial commitment requirement of this subdivision.]

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

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

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

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline including those at significant risk of coastal flooding due to projected sea level rise and future storms; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt. PRESERVATION OF COMMUNITY CHARACTER SHALL ALSO INCLUDE THE PROTECTION AND IMPROVEMENT OF THE QUALITY OF ALL WATER RESOURCES.

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

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

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

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

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

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

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

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

13. The cost of employees and independent contractors to implement the provisions of this section, may only be paid for by the fund where the duties and responsibilities of said employees and independent contractors are directly dedicated to implementing the provisions of this section. Where such employees and independent contractors are not exclusively dedicated to implementing the provisions of this section, no more than the cost of the actual time expended directly dedicated to implementing the provisions of this section may be charged. Such costs shall be expressly identified in the town budget and any plan adopted pursuant to this section before funds for such costs may be expended. In addition, such costs must be documented by a time accounting system, subject to audit. Costs relating to the activities of elected officials implementing the purposes of this section may not be a charge to the fund.

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

S 3. Section 5 of 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, as amended by chapter 391 of the laws of 2006, is amended to read as follows:

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

S 4. This act shall take effect immediately.