

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:

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.

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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 municip-
21 al 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 municipi-
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.