

# STATE OF NEW YORK

S. 3229--A

A. 2683--A

2017-2018 Regular Sessions

## SENATE - ASSEMBLY

January 20, 2017

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to enacting the "Peconic Bay estuary protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a  
2 new article 58 to read as follows:

### ARTICLE 58

#### PECONIC BAY ESTUARY PROTECTION ACT

3 Section 58-0101. Short title.

4 58-0103. Legislative declaration.

5 58-0105. Legislative findings and intent.

6 58-0107. Definitions.

7 58-0109. Peconic region maritime reserve council.

8 58-0111. Duties of the council.

9 58-0113. Peconic Bay regional conservation partnership program.

10 58-0115. Peconic Bay estuary implementation projects.

11 58-0117. State assistance payments for Peconic Bay estuary  
12 implementation projects.

13 58-0119. State assistance application procedure and standards.

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

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58-0121. Contracts for state assistance payments for Peconic Bay estuary implementation projects.

58-0123. State projects.

58-0125. Severability.

§ 58-0101. Short title.

This article shall be known and may be cited as the "Peconic Bay estuary protection act".

§ 58-0103. Legislative declaration.

The legislature hereby declares it to be in the public interest to protect and manage the Peconic Bay estuary, in the county of Suffolk, by establishing a Peconic Bay estuary reserve. It is further in the public interest to establish a council made up of representatives of state and local governments and stakeholders to implement the comprehensive conservation and management plan created for the Peconic Bay estuary system pursuant to the national estuary program.

§ 58-0105. Legislative findings and intent.

The Peconic Bay system is one of twenty-eight estuaries across the country designated as part of the national estuary program pursuant to the federal clean water act. The purpose of the national estuary program is to develop watershed-based comprehensive management plans for estuaries of national significance threatened by pollution, development, or misuse.

In nineteen hundred ninety-one, the Peconic Bay estuary was nominated as an estuary of national significance under the national estuary program. The Peconic Bay estuary was formally accepted into the national estuary program in nineteen hundred ninety-two. Since nineteen hundred ninety-two, the state of New York, the county of Suffolk, the environmental protection agency together with the local governments, citizens, businesses, industry and environmental groups, and other stakeholders within the Peconic Bay region, collectively known as the Peconic Bay estuary program management conference, have worked together to create a comprehensive conservation and management plan to protect the Peconic Bay estuary.

The economic significance of the Peconic Bay estuary is well established. More than eleven hundred establishments were identified in the Peconic Bay estuary as "estuarine dependent" with gross revenues exceeding four hundred fifty million dollars per year. These stakeholders, establishments and industries are represented by the association of marine industries, the east end marine farmers association, the baymen association of the five east end towns, the Long Island farm bureau and the New York sea food council, among others. The future of this economic base clearly depends on maintaining the quality of the estuary.

Before the completion of the comprehensive conservation and management plan for the Peconic Bay estuary, an action plan was established to provide for early implementation of initiatives to benefit the estuary. Seven million dollars in federal and state funds have been dedicated to fifty-one demonstration and implementation projects, including sewage plant upgrades, agricultural environmental management, storm water mitigation, bay scallop seeding, wetland and eelgrass restoration, and demonstrations of numerous best management practices, including no discharge zones, inventorying of historic depths, water access points, hardened structures, critical natural resource areas and other inventory related items. Further under the State Clean Air/Clean Water Bond Act, a minimum of thirty million dollars has been allocated for the Peconic Bay and South Shore estuaries. Finally, in nineteen hundred ninety-eight, the legislature adopted chapter one hundred fourteen of the laws

1 of nineteen hundred ninety-eight establishing the Peconic Bay community  
2 preservation fund which established a two percent real estate transfer  
3 tax to fund land preservation efforts in the Peconic Bay region.

4 The draft comprehensive conservation and management plan has now been  
5 completed. It is the purpose of this article to provide for the imple-  
6 mentation of recommendations made in the comprehensive conservation and  
7 management plan.

8 § 58-0107. Definitions.

9 As used in this article, the following terms shall mean and include:

10 1. "Cost" means the cost of acquiring a parcel of land identified in a  
11 partnership agreement authorized pursuant to section 58-0113 of this  
12 article, the cost of implementing a project pursuant to the comprehen-  
13 sive conservation and management plan created for the Peconic Bay system  
14 pursuant to the national estuary program as well as consultant and legal  
15 services, and other direct expenses incident to such acquisition or  
16 implementation less any federal assistance received or to be received  
17 and any other assistance from other parties.

18 2. "Council" shall mean the Peconic region maritime reserve council  
19 created pursuant to section 58-0109 of this article.

20 3. "Federal assistance" means funds available, other than by loan,  
21 from the federal government, either directly or through allocation by  
22 the state for construction or program purposes pursuant to any federal  
23 law or program.

24 4. "Governing body" means:

25 a. in the case of Suffolk county, the Suffolk county legislature;

26 b. in the case of a village within Suffolk county, the local legisla-  
27 tive body thereof, as such term is defined in the municipal home rule  
28 law;

29 c. in the case of a town within Suffolk county, the town board;

30 d. in the case of a public benefit corporation, the board of direc-  
31 tors, members or trustees thereof;

32 e. in the case of a public authority, the governing board of direc-  
33 tors, members or trustees thereof;

34 f. in the case of a not-for-profit corporation, the board of directors  
35 thereof or such other body designated in the certificate of incorpo-  
36 ration to manage the corporation; and

37 g. in the case of an Indian tribe or nation, any governing body recog-  
38 nized by the United States or the state of New York.

39 5. "Long Island Pine Barrens maritime reserve" shall mean the Long  
40 Island Pine Barrens maritime reserve established pursuant to article  
41 fifty-seven of this chapter.

42 6. "Municipality" means Suffolk county, a local public authority,  
43 public benefit corporation, a town or village within Suffolk county or  
44 any combination thereof, state agencies, state public authorities and  
45 state public benefit corporations.

46 7. "Not-for-profit corporation" means a corporation formed pursuant to  
47 the not-for-profit corporation law and qualified for tax-exempt status  
48 under the federal internal revenue code.

49 8. "Peconic Bay estuary" or "Peconic Bay system" shall mean the series  
50 of interconnected bodies or surface waters, including Flanders Bay,  
51 Great Peconic Bay, Little Peconic Bay, Noyack Bay, Shelter Island Sound,  
52 Southold Bay, Northwest Harbor, Orient Harbor, Gardiners Bay, Napeague  
53 Bay, Fort Pond Bay, the western portion of Block Island Sound, other  
54 semi-enclosed bays and harbors contiguous thereto, and all of the tidal  
55 creeks and freshwater streams that discharge into these interconnected  
56 basins.

1 9. "Plan" shall mean the comprehensive conservation and management  
2 plan created for the Peconic Bay system pursuant to the national estuary  
3 program.

4 10. "Traditional uses" means commercial fishing and shell fishing,  
5 shellfish farming, recreational boating, recreational fishing and shell  
6 fishing.

7 11. "Work plan" shall mean an advisory recommendation to a state agen-  
8 cy or local municipality.

9 § 58-0109. Peconic region maritime reserve council.

10 1. There is hereby established a Peconic Region maritime council to  
11 assist federal, state and local governments coordinate all efforts to  
12 implement the plan.

13 2. a. The council shall be composed of the following members:

14 (i) three members appointed by the governor;

15 (ii) three members appointed by the temporary president of the senate;

16 (iii) three members appointed by the speaker of the assembly;

17 (iv) four members appointed by the county executive of the county of  
18 Suffolk, with the advice and consent of the county legislature of such  
19 county;

20 (v) the chief executive officers, or their designees, of the town of  
21 East Hampton, the town of Riverhead, the town of Shelter Island, the  
22 town of Southampton, the town of Southold, the village of Dering Harbor,  
23 the village of East Hampton, the village of Greenport, the village of  
24 North Haven, the village of Quogue, the village of Sag Harbor, the  
25 village of Southampton, the village of Westhampton Beach and the village  
26 of West Hampton Dunes;

27 (vi) a designee of the Empire State Marine Trades Association;

28 (vii) a designee of the Association of Marine Industries;

29 (viii) a designee of the Baymen Association of the Five East End  
30 Towns;

31 (ix) a designee of the East End Marine Farmers Association;

32 (x) a designee of the New York Sea Food Council;

33 (xi) a designee of the Long Island farm bureau;

34 (xii) a designee of the New York state sea grant;

35 (xiii) a designee of the state university of New York at Stony Brook  
36 marine science research center;

37 (xiv) a designee of the Long Island University-Southampton college  
38 maritime sciences program; and

39 (xv) two designees of the Cornell cooperative extension, one of whom  
40 shall be a marine program extension educator and the other who shall be  
41 an agricultural extension educator.

42 b. The commissioner, or his or her designee, the secretary of state,  
43 or his or her designee, for purposes of matters related to coastal  
44 resources and a representative of the federal environmental protection  
45 agency shall serve as ex officio members.

46 c. All members, except ex officio members, shall be residents of the  
47 county of Suffolk and shall demonstrate expertise in the functional  
48 areas to be addressed by the council. All initial appointments shall be  
49 made within sixty days from the effective date of this article.

50 3. The members of the council shall serve for a term of two years or  
51 thereafter until a successor is appointed. The council shall select a  
52 chairperson, a vice-chairperson and such other officers as it may deter-  
53 mine are necessary for the conduct of its duties.

54 4. The members of the council shall serve without compensation.

55 5. The council shall consist of the following committees: a policy  
56 committee, a management committee, a technical advisory committee, a

1 citizen advisory committee and a local government committee. The compo-  
2 sition of such committees shall be established by the council.

3 § 58-0111. Duties of the council.

4 1. The council shall have the following powers and duties:

5 a. to facilitate communication and coordination of the public and  
6 private sectors working to implement the plan;

7 b. to monitor and evaluate progress in implementing the plan, includ-  
8 ing an annual state of the bays report;

9 c. to assist in securing funds to implement the plan;

10 d. to reassess and update the plan every two years;

11 e. to develop an annual financial plan to ensure plan implementation;

12 f. to negotiate commitments between stakeholders to implement the  
13 plan;

14 g. to encourage consistency in regulatory programs and standards  
15 consistent with the plan;

16 h. to provide technical assistance to local government and the private  
17 sector;

18 i. to make rules for the management and regulation of its affairs;

19 j. to hold public hearings;

20 k. to conduct scientific and environmental studies;

21 l. to contract within amounts appropriated for or otherwise available  
22 for professional and technical assistance or advice; and

23 m. to encourage individuals, corporations, associations, and public  
24 entities to protect, and preserve the unique resources of the reserve.

25 2. In addition to the duties set forth in subdivision one of this  
26 section, the council shall also complete the following responsibilities  
27 by December thirty-first, two thousand twenty:

28 a. identify additional revenue sources to fund the implementation of  
29 the plan; and

30 b. establish a work plan to address the following estuary related  
31 issues:

32 (i) agricultural management plans;

33 (ii) pesticide reduction;

34 (iii) priorities for additional scientific and applied research,  
35 including the targeting of the restoration of bivalve shellfish popu-  
36 lations;

37 (iv) environmental monitoring, including radiological monitoring;

38 (v) continued public education and outreach;

39 (vi) establishment of a nitrogen control program to implement nitrogen  
40 reduction policies;

41 (vii) use of incentives to encourage the implementation of plan goals;  
42 and

43 (viii) other matters as may be deemed necessary and appropriate by the  
44 council.

45 § 58-0113. Peconic Bay regional conservation partnership program.

46 1. There is hereby established a Peconic Bay regional conservation  
47 partnership program within the department to administer partnership  
48 agreements, by and between the department and (i) Suffolk county and/or  
49 (ii) local governments within the Long Island Pine Barrens maritime  
50 reserve. Such partnership agreements shall include, but not be limited  
51 to, the following:

52 a. a list of parcels and areas that need to be protected;

53 b. such list of parcels and areas shall be subject to a public hearing  
54 by the county or local government seeking to include said parcels and  
55 areas within the partnership;

1 c. a list of priorities based on environmental sensitivity and extent  
2 of development pressure;

3 d. a description of the proposed use and management plan for the  
4 parcels and areas to be protected; and

5 e. a list of other sources of funding to implement the partnership  
6 agreement.

7 2. Approval of such partnership agreement by the commissioner shall  
8 authorize the applicant to receive from the state the state's share of  
9 funding as stated in such partnership agreement for the protection of  
10 the parcels identified in said partnership agreement.

11 3. Each state agency designated by the governor, including but not  
12 limited to the department, the office of parks, recreation and historic  
13 preservation, the department of state, the department of transportation,  
14 and the environmental facilities corporation, within one hundred eighty  
15 days of the effective date of this article, shall prepare a two year  
16 action plan for the implementation of the Peconic Bay estuary comprehen-  
17 sive conservation and management plan. A copy of the action plans shall  
18 be submitted to the governor and the legislature. Such action plan shall  
19 be updated annually.

20 § 58-0115. Peconic Bay estuary implementation projects.

21 As used in this article, "Peconic Bay estuary implementation projects"  
22 shall mean those projects recommended as part of the comprehensive  
23 conservation and management plan or action plan for the Peconic Bay  
24 estuary, which enhance the productivity of the estuary pursuant to  
25 historic, current commercial and traditional uses, including but not  
26 limited to research related to the restoration of shellfish populations  
27 in the estuary and which serve a public purpose designated to improve or  
28 maintain surface water quality, undertaken by the state, a municipality  
29 or a not-for-profit corporation which demonstrates to the commissioner's  
30 satisfaction that it is financially and otherwise capable of completing  
31 such project.

32 § 58-0117. State assistance payments for Peconic Bay estuary implementa-  
33 tion projects.

34 1. The commissioner is authorized to provide on a competitive basis,  
35 within amounts appropriated, state assistance payments to a municipality  
36 or a not-for-profit corporation toward the cost of any Peconic Bay estu-  
37 ary implementation project approved by the commissioner.

38 2. The commissioner and a municipality or not-for-profit corporation  
39 may enter into a contract for the undertaking of a Peconic Bay estuary  
40 implementation project. Such project shall be recommended to the  
41 commissioner by the governing body of the municipality or not-for-profit  
42 corporation, and when approved by the commissioner, undertaken by the  
43 municipality or not-for-profit corporation pursuant to this article and  
44 any other applicable provisions of law.

45 3. State assistance payments shall not exceed fifty percent of the  
46 project cost or two million dollars, whichever is less. Such costs are  
47 subject to final computation and determination by the commissioner upon  
48 completion of the project, and shall not exceed the maximum eligible  
49 cost set forth in the contract.

50 4. Prior to processing applications for state assistance payments  
51 toward the cost of Peconic Bay estuary implementation projects, the  
52 commissioner shall promulgate rules and regulations which shall include  
53 criteria for determining eligible expenditures and procedures for  
54 governing the commitment and disbursement of funds appropriated in  
55 accordance with this article. The commissioner shall also promulgate  
56 rules and regulations which shall include application procedures, review



1 processes, and project approval guidelines and criteria consistent with  
2 section 58-0123 of this article.

3 § 58-0119. State assistance application procedure and standards.

4 In the case of Peconic Bay estuary implementation projects, a munici-  
5 pality or not-for-profit corporation, upon the approval of its governing  
6 body, may submit an application to the commissioner, in such form and  
7 containing such information as the commissioner may require, for state  
8 assistance payments toward the cost of a project which is within the  
9 state and which is eligible for state assistance pursuant to this arti-  
10 cle. The commissioner shall review such project application and may  
11 approve, disapprove or recommend modifications thereto consistent with  
12 applicable law, criteria, standards or rules and regulations relative to  
13 such projects. Such criteria and standards shall include, but not be  
14 limited to inclusion on an action plan or comprehensive conservation and  
15 management plan prepared under the Peconic Bay estuary program.

16 Upon approval of a project application, a municipality or not-for-pro-  
17 fit corporation shall enter into a contract, as further provided within  
18 this article, with the commissioner for state assistance payments toward  
19 the cost of such project to be received pursuant to this article.

20 § 58-0121. Contracts for state assistance payments for Peconic Bay estu-  
21 ary implementation projects.

22 1. The commissioner may, in the name of the state, enter into  
23 contracts with municipalities or not-for-profit corporations, to provide  
24 state assistance payments toward the cost of Peconic Bay estuary imple-  
25 mentation projects which shall include the following provisions:

26 a. an estimate of the costs of the project as determined by the  
27 commissioner;

28 b. an agreement by the commissioner to make state assistance payments  
29 toward the cost of the project by periodically reimbursing the munici-  
30 pality or not-for-profit corporation during the progress of project  
31 development or following completion of the project as may be agreed upon  
32 by the parties, in an amount not to exceed the amounts established else-  
33 where in this article; and

34 c. an agreement by the municipality or not-for-profit corporation:

35 (i) to proceed expeditiously with and complete the project as approved  
36 by the commissioner;

37 (ii) to undertake and maintain the Peconic Bay estuary implementation  
38 project in accordance with applicable law and rules and regulations;

39 (iii) to provide for the payment of the municipality's or not-for-pro-  
40 fit corporation's share of the cost of the project;

41 (iv) to assume the full cost of any additional elements or continued  
42 operation of the project;

43 (v) to repay within one year of notification by the commissioner, any  
44 state assistance payments made toward the cost of the project or an  
45 equitable portion of such monies declared appropriate by the commission-  
46 er, if the municipality or not-for-profit corporation fails to complete  
47 the project as approved. No repayment, however, shall be required where  
48 the commissioner determines that such failure, disposition or change of  
49 use was immediately necessary to protect public health and safety;

50 (vi) to apply for and make reasonable efforts to secure federal  
51 assistance for the project; and

52 (vii) to not sell, lease, or otherwise dispose of or use lands reha-  
53 ilitated under this article for any purpose inconsistent with the  
54 project for a period of seven years from the commissioner's approval of  
55 the project.

1     2. In connection with each contract, the commissioner shall keep  
2     adequate records of the amount of the payment by the state and of the  
3     amount of federal assistance, if any, received by the municipality or  
4     not-for-profit corporation. Such records shall be retained by the  
5     commissioner and shall establish the basis for recalculation of the  
6     state payment as required by this section.

7     § 58-0123. State projects.

8     The commissioner is authorized, within amounts appropriated, to  
9     directly undertake a Peconic Bay estuary implementation project pursuant  
10    to this article where such project is recommended in an action plan or  
11    comprehensive conservation and management plan, and is on state lands or  
12    state lands underwater or is otherwise under the control of the state.

13    § 58-0125. Severability.

14    If any clause, sentence, paragraph, section or part of this article  
15    shall be adjudged by any court of competent jurisdiction to be invalid,  
16    such judgment shall not affect, impair or invalidate the remainder ther-  
17    eof, but shall be confined in its operation to the clause, sentence,  
18    paragraph, section or part thereof directly involved in the controversy  
19    in which such judgment shall have been rendered.

20    § 2. This act shall take effect on the one hundred eightieth day after  
21    it shall have become a law.