STATE OF NEW YORK

4340

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

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:

Section 1. The environmental conservation law is amended by adding a new article 59 to read as follows:

ARTICLE 59
PECONIC BAY ESTUARY PROTECTION ACT
Section 59-0101. Short title.
59-0103. Legislative declaration.
59-0105. Legislative findings and intent.
59-0107. Definitions.
59-0109. Peconic region maritime reserve council.
59-0111. Duties of the council.
59-0113. Peconic Bay regional conservation partnership program.
59-0115. Peconic Bay estuary implementation projects.
59-0117. State assistance payments for Peconic Bay estuary implementation projects.
59-0119. State assistance application procedure and standards.
59-0121. Contracts for state assistance payments for Peconic Bay estuary implementation projects.
59-0123. State projects.
59-0125. Severability.

§ 59-0101. Short title.

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

§ 59-0103. 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

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

LBD08610-01-1

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.

§ 59-0105. 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 of nineteen hundred ninety-eight establishing the Peconic Bay community preservation fund which established a two percent real estate transfer tax to fund land preservation efforts in the Peconic Bay region.

The draft comprehensive conservation and management plan has now been completed. It is the purpose of this article to provide for the implementation of recommendations made in the comprehensive conservation and management plan.

§ 59-0107. Definitions.

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

1. "Cost" means the cost of acquiring a parcel of land identified in a partnership agreement authorized pursuant to section 59-0113 of this article, the cost of implementing a project pursuant to the comprehensive conservation and management plan created for the Peconic Bay system pursuant to the national estuary program as well as consultant and legal services, and other direct expenses incident to such acquisition or implementation less any federal assistance received or to be received and any other assistance from other parties.

2. "Council" shall mean the Peconic region maritime reserve council created pursuant to section 59-0109 of this article.

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

4. "Governing body" means:

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

b. in the case of a village within Suffolk county, the local legislative body thereof, as such term is defined in the municipal home rule law;

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

d. in the case of a public benefit corporation, the board of directors, members or trustees thereof;

e. in the case of a public authority, the governing board of directors, members or trustees thereof;

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

g. in the case of an Indian tribe or nation, any governing body recognized by the United States or the state of New York.

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

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

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

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

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

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

11. "Work plan" shall mean an advisory recommendation to a state agency or local municipality.

§ 59-0109. Peconic region maritime reserve council.

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

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

(i) three members appointed by the governor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The council shall consist of the following committees: a policy committee, a management committee, a technical advisory committee, a citizen advisory committee and a local government committee. The composition of such committees shall be established by the council.

§ 59-0111. Duties of the council.

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

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

b. to monitor and evaluate progress in implementing the plan, including an annual state of the bays report;

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

d. to reassess and update the plan every two years;
e. to develop an annual financial plan to ensure plan implementation;
f. to negotiate commitments between stakeholders to implement the plan;
g. to encourage consistency in regulatory programs and standards consistent with the plan;
h. to provide technical assistance to local government and the private sector;
i. to make rules for the management and regulation of its affairs;
j. to hold public hearings;
k. to conduct scientific and environmental studies;
l. to contract within amounts appropriated for or otherwise available for professional and technical assistance or advice; and
m. to encourage individuals, corporations, associations, and public entities to protect, and preserve the unique resources of the reserve.
2. In addition to the duties set forth in subdivision one of this section, the council shall also complete the following responsibilities by December thirty-first, two thousand twenty-four:
a. identify additional revenue sources to fund the implementation of the plan; and
b. establish a work plan to address the following estuary related issues:
(i) agricultural management plans;
(ii) pesticide reduction;
(iii) priorities for additional scientific and applied research, including the targeting of the restoration of bivalve shellfish populations;
(iv) environmental monitoring, including radiological monitoring;
(v) continued public education and outreach;
(vi) establishment of a nitrogen control program to implement nitrogen reduction policies;
(vii) use of incentives to encourage the implementation of plan goals; and
(viii) other matters as may be deemed necessary and appropriate by the council.

§ 59-0113. Peconic Bay regional conservation partnership program.

1. There is hereby established a Peconic Bay regional conservation partnership program within the department to administer partnership agreements, by and between the department and (i) Suffolk county and/or (ii) local governments within the Long Island Pine Barrens maritime reserve. Such partnership agreements shall include, but not be limited to, the following:
a. a list of parcels and areas that need to be protected;
b. such list of parcels and areas shall be subject to a public hearing by the county or local government seeking to include said parcels and areas within the partnership;
c. a list of priorities based on environmental sensitivity and extent of development pressure;
d. a description of the proposed use and management plan for the parcels and areas to be protected; and
e. a list of other sources of funding to implement the partnership agreement.
2. Approval of such partnership agreement by the commissioner shall authorize the applicant to receive from the state the state's share of funding as stated in such partnership agreement for the protection of the parcels identified in said partnership agreement.

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

§ 59-0115. Peconic Bay estuary implementation projects.

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

§ 59-0117. State assistance payments for Peconic Bay estuary implementation projects.

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

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

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

4. Prior to processing applications for state assistance payments toward the cost of Peconic Bay estuary implementation projects, the commissioner shall promulgate rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this article. The commissioner shall also promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria consistent with section 59-0123 of this article.

§ 59-0119. State assistance application procedure and standards.

In the case of Peconic Bay estuary implementation projects, a municipality or not-for-profit corporation, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state and which is eligible for state assistance pursuant to this article. The commissioner shall review such project application and may

approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Such criteria and standards shall include, but not be limited to inclusion on an action plan or comprehensive conservation and management plan prepared under the Peconic Bay estuary program.

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

§ 59-0121. Contracts for state assistance payments for Peconic Bay estuary implementation projects.

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

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

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality or not-for-profit corporation during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this article; and

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

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

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

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

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

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

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

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

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

§ 59-0123. State projects.

The commissioner is authorized, within amounts appropriated, to directly undertake a Peconic Bay estuary implementation project pursuant to this article where such project is recommended in an action plan or

comprehensive conservation and management plan, and is on state lands or state lands underwater or is otherwise under the control of the state.

§ 59-0125. Severability.

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

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