

# STATE OF NEW YORK

9065

## IN SENATE

April 16, 2024

Introduced by Sen. PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the town law, in relation to the Peconic Bay region community preservation funds; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subdivisions 1 and 3 of section 64-e of the town law, as  
2 amended by chapter 551 of the laws of 2015, paragraph (e) of subdivision  
3 1 as separately amended by chapters 490 and 501 of the laws of 2018, are  
4 amended to read as follows:

5 1. As used in this section, the following words and terms shall have  
6 the following meanings:

7 (a) "Peconic Bay region" means the towns of East Hampton, Riverhead,  
8 Shelter Island, Southampton and Southold.

9 (b) "Community preservation" shall mean and include any of the  
10 purposes outlined in subdivision four of this section.

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

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

15 (e) "Water quality improvement project" means: [~~(1) wastewater treat-~~  
16 ~~ment improvement projects; (2) non-point source abatement and control~~  
17 ~~program projects developed pursuant to section eleven b of the soil and~~  
18 ~~water conservation districts law, title 14 of article 17 of the environ-~~  
19 ~~mental conservation law, section 1455b of the federal coastal zone~~  
20 ~~management act, or article forty-two of the executive law; (3) aquatic~~  
21 ~~habitat restoration projects; (4) pollution prevention projects; (5) the~~  
22 ~~construction of public water mains and connections to provide drinking~~  
23 ~~water to inhabitants whose drinking water supply has been contaminated~~  
24 ~~by toxic chemicals as defined in section 37-0301 of the environmental~~  
25 ~~conservation law, hazardous substances as defined in section 40-0105 of~~  
26 ~~the environmental conservation law or emerging contaminants as defined~~  
27 ~~in section eleven hundred twelve of the public health law; and (6) the~~

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

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1 ~~operation of the Peconic Bay National Estuary Program, as designated by~~  
2 ~~the United States Environmental Protection Agency, and (6) a septic~~  
3 ~~system replacement loan program, pursuant to section sixty-four-ee of~~  
4 ~~the town law. Such projects shall have as their purpose the improvement~~  
5 ~~of existing water quality to meet existing specific water quality stand-~~  
6 ~~ards. Projects which have as a purpose to permit or accommodate new~~  
7 ~~growth shall not be included within this definition.~~

8 ~~(f) "Wastewater treatment improvement project" means the planning,~~  
9 ~~design, construction, acquisition, enlargement, extension, or alteration~~  
10 ~~of a wastewater treatment facility, including alternative systems to a~~  
11 ~~sewage treatment plant or traditional septic system, to treat, neutral-~~  
12 ~~ize, stabilize, eliminate or partially eliminate sewage or reduce pollu-~~  
13 ~~tants in treatment facility effluent, including permanent or pilot~~  
14 ~~demonstration wastewater treatment projects, or equipment or furnishings~~  
15 ~~thereof. Stormwater collecting systems and vessel pumpout stations shall~~  
16 ~~also be included within the definition of a wastewater improvement~~  
17 ~~project.~~

18 ~~(g) "Aquatic habitat restoration project" means the planning, design,~~  
19 ~~construction, management, maintenance, reconstruction, revitalization,~~  
20 ~~or rejuvenation activities intended to improve waters of the state of~~  
21 ~~ecological significance or any part thereof, including, but not limited~~  
22 ~~to ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and~~  
23 ~~shorelines thereof, to support a spawning, nursery, wintering, migrato-~~  
24 ~~ry, nesting, breeding, feeding, or foraging environment for fish and~~  
25 ~~wildlife and other biota.~~

26 ~~(h) "Pollution prevention project" means the planning, design,~~  
27 ~~construction, improvement, maintenance or acquisition of facilities,~~  
28 ~~production processes, equipment or buildings owned or operated by muni-~~  
29 ~~cipalities for the reduction, avoidance, or elimination of the use of~~  
30 ~~toxic or hazardous substances or the generation of such substances or~~  
31 ~~pollutants so as to reduce risks to public health or the environment,~~  
32 ~~including changes in production processes or raw materials, such~~  
33 ~~projects shall not include incineration, transfer from one medium of~~  
34 ~~release or discharge to another medium, off-site or out-of-production~~  
35 ~~recycling, end-of-pipe treatment or pollution control.~~

36 ~~(i) "Stormwater collecting system" means systems of conduits and all~~  
37 ~~other construction, devices, and appliances appurtenant thereto,~~  
38 ~~designed and used to collect and carry stormwater and surface water,~~  
39 ~~street wash, and other wash and drainage waters to a point source for~~  
40 ~~discharge.~~

41 ~~(j) "Vessel pumpout station" means a project for the planning, design,~~  
42 ~~acquisition or construction of a permanent or portable device capable of~~  
43 ~~removing human sewage from a marine holding tank] projects designed to~~  
44 ~~improve the quality of drinking and surface waters and projects, includ-~~  
45 ~~ing operational expenses, related to the operation of the Peconic Bay~~  
46 ~~National Estuary Program, as designated by the United States Environ-~~  
47 ~~mental Protection Agency.~~

48 ~~(f) "Disadvantaged communities" shall mean a community that is identi-~~  
49 ~~fied pursuant to section 75-0111 of the environmental conservation law.~~

50 3. The purposes of the fund shall be exclusively, (a) to implement a  
51 plan for the preservation of community character as required by this  
52 section, (b) to acquire interests or rights in real property for the  
53 preservation of community character within the town including villages  
54 therein in accordance with such plan and in cooperation with willing  
55 sellers, (c) to establish a bank pursuant to a transfer of development  
56 rights program consistent with section two hundred sixty-one-a of this

1 chapter, (d) to provide a management and stewardship program for such  
2 interests and rights consistent with subdivisions nine and nine-a of  
3 this section and in accordance with such plan designed to preserve  
4 community character; provided that not more than ten percent of the fund  
5 shall be utilized for the management and stewardship program, and (e) to  
6 implement water quality improvement projects in accordance with a plan  
7 to preserve community character. A maximum of twenty (20) percent of the  
8 fund may be utilized for the implementation of water quality improvement  
9 projects; provided that where such water quality improvement funds are  
10 utilized for the operation of the Peconic Bay National Estuary Program,  
11 the use of such funds shall only be utilized to match federal, state,  
12 county, or other public or private funds on a dollar for dollar basis,  
13 not to exceed ten (10) percent of the annual amount appropriated for  
14 water quality improvement projects. Funds utilized for water quality  
15 improvement projects may be carried forward from year to year for utili-  
16 zation in future budgets. In towns with one or more disadvantaged commu-  
17 nities, not less than ten (10) percent of the annual proceeds of the  
18 fund shall be utilized to benefit such disadvantaged communities. If the  
19 implementation of the community preservation project plan, adopted by a  
20 town board, as provided in subdivision six of this section, has been  
21 completed, and funds are no longer needed for the purposes outlined in  
22 this subdivision, then any remaining monies in the fund shall be applied  
23 to reduce any bonded indebtedness or obligations incurred to effectuate  
24 the purposes of this section.

25 § 2. Subdivision 4 of section 64-e of the town law, as amended by  
26 chapter 255 of the laws of 2020, is amended to read as follows:

27 4. Preservation of community character shall involve one or more of  
28 the following: (a) establishment of parks, nature preserves, or recre-  
29 ation areas; (b) preservation of open space, including agricultural  
30 lands provided, however, that farm buildings and structures used for the  
31 marketing of farm products produced on such agricultural lands shall be  
32 permitted; (c) preservation of lands of exceptional scenic value; (d)  
33 preservation of fresh and saltwater marshes or other wetlands; (e) pres-  
34 ervation of aquifer recharge areas; (f) preservation of undeveloped  
35 beachlands or shoreline including those at significant risk of coastal  
36 flooding due to projected sea level rise and future storms; (g) estab-  
37 lishment of wildlife refuges for the purpose of maintaining native  
38 animal species diversity, including the protection of habitat essential  
39 to the recovery of rare, threatened or endangered species; (h) preserva-  
40 tion of pine barrens consisting of such biota as pitch pine, and scrub  
41 oak; (i) preservation of unique or threatened ecological areas; (j)  
42 preservation of rivers and river areas in a natural, free-flowing condi-  
43 tion; (k) preservation of forested land; (l) preservation of public  
44 access to lands for public use including stream rights and waterways;  
45 (m) preservation of historic places and properties listed on the New  
46 York state register of historic places and/or protected under a municip-  
47 al historic preservation ordinance or law; (n) preservation of lands  
48 necessary to protect fisheries and water dependent uses essential to  
49 maintain and enhance maritime heritage; [~~and~~] (o) preservation of lands  
50 that contain significant cultural resources including the aboriginal  
51 lands of indigenous peoples, including but not limited to, burial sites,  
52 settlements, and lands utilized for ceremonial purposes; and (p) under-  
53 taking any of the aforementioned in furtherance of the establishment of  
54 a greenbelt. Preservation of community character shall also include the  
55 protection and improvement of the quality of all water resources.

1 § 3. Subdivision 9 of section 64-e of the town law is REPEALED and a  
2 new subdivision 9 is added to read as follows:

3 9. (a) Lands acquired pursuant to this section shall be administered  
4 and managed in a manner which maximizes public use and enjoyment in a  
5 manner compatible with the character of such lands.

6 (b) Lands acquired for open space purposes shall preserve the native  
7 biological diversity of such lands.

8 (c) With regard to lands acquired for open space purposes improvements  
9 shall be limited to minimal improvements that enhance access for passive  
10 use of such lands. Such improvements shall not degrade the ecological  
11 value of the land or threaten essential wildlife habitat.

12 (d) Historic and cultural property shall be preserved consistent with  
13 accepted standards for historic preservation. Adaptive reuse of such  
14 properties shall be consistent with the historic character and prior use  
15 of the property and shall be consistent with all local land use plans  
16 and regulations. Such historic and cultural properties shall maximize  
17 public use to the extent practicable.

18 (e) In furthering the purposes of this section, the town may enter  
19 into agreements with corporations organized under the not-for-profit  
20 corporation law and engaged in preservation activities to manage lands,  
21 including less than fee interests acquired pursuant to the provisions of  
22 this section, provided that any such agreement shall contain a provision  
23 that such corporation shall keep the lands accessible to the public  
24 unless such corporation shall demonstrate to the satisfaction of the  
25 town that public accessibility would be detrimental to the lands or any  
26 historic, cultural, or natural resources associated therewith. Where  
27 revenues are generated by such corporations on such lands pursuant to  
28 such agreements, disposition of such revenues shall be governed by the  
29 town pursuant to resolution or local law.

30 § 4. Subdivision 9-a of section 64-e of the town law is REPEALED and a  
31 new subdivision 9-a is added to read as follows:

32 9-a. (a) Management and stewardship funds may only be expended for  
33 projects related to lands acquired for open space preservation and  
34 historic preservation purposes. Lands acquired for any other purpose  
35 shall not be eligible for management and stewardship funds. In the case  
36 of lands acquired for open space preservation purposes, management and  
37 stewardship projects shall be only expended for: (1) projects which  
38 promote the protection or enhancement of the natural, scenic, and open  
39 space character for which the interests or rights in real property were  
40 acquired; or (2) minimal improvements as permitted by subdivision nine  
41 of this section; or (3) restoration of acquired real property to its  
42 natural state including the demolition of existing buildings and struc-  
43 tures.

44 (b) In the case of interests or rights in real property acquired for  
45 historic preservation purposes, funds may be expended for the restora-  
46 tion, rehabilitation, or replacement of buildings and structures  
47 consistent with accepted standards for historic preservation.

48 (c) Expenses related to the customary operation and maintenance of  
49 acquired interests or rights in real property shall not be permitted  
50 from the management and stewardship portion of the fund, except that in  
51 the case of historic properties, where the town has entered into an  
52 agreement with a not-for profit corporation for the management of such  
53 properties as permitted by subdivision nine of this section, up to twenty  
54 (20) percent of the management and stewardship portion of the fund or  
55 two (2) percent of the total annual revenue of the fund, may be dedi-  
56 cated to the operation and maintenance of stewardship properties managed

1 by such corporations. Where a town enters into an agreement for the  
2 management of an historic property with a not-for-profit corporation and  
3 the town allocates management and stewardship funds for the operation  
4 and maintenance of such historic property, said corporation shall annu-  
5 ally provide for a full accounting of such funds to the town board.

6 (d) Any project funded pursuant to this subdivision, except operation  
7 and maintenance expenses permitted pursuant to paragraph (c) of this  
8 subdivision, must have a useful life of five years or more under section  
9 11.00 of the local finance law.

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

12 § 5. Subdivision 11 of section 64-e of the town law is REPEALED and a  
13 new subdivision 11 is added to read as follows:

14 11. Notwithstanding any provision of law to the contrary, towns may  
15 enter into intermunicipal agreements pursuant to article five-G of the  
16 general municipal law for the following purposes:

17 (a) to jointly acquire interests or rights in real property, consist-  
18 ent with the purposes of this section, where the acquisition of such  
19 interests or rights promotes a regional public benefit for two or more  
20 towns pursuant to a regional plan;

21 (b) to provide for an independent financial audit of each town's fund;  
22 and

23 (c) to hire employees necessary to implement the provisions of this  
24 section.

25 § 6. Section 64-e of the town law is amended by adding a new subdivi-  
26 sion 14 to read as follows:

27 14. (a) The towns in the Peconic Bay region shall jointly establish,  
28 by intermunicipal agreement, the office of regional community preserva-  
29 tion fund counsel to render legal opinions and interpretations to facil-  
30 itate the efficient and consistent administration of the funds created  
31 pursuant to this section. All such opinions and interpretations rendered  
32 shall be published on each town's official website and shall be avail-  
33 able to the public as a public record under article six of the public  
34 officers law.

35 (b) The towns in the Peconic Bay region shall jointly establish, by  
36 intermunicipal agreement, the Peconic Bay Region Advisory Committee to  
37 advise town boards regarding policy and administrative issues relating  
38 to funds established pursuant to this section. The committee shall  
39 consist of eleven (11) members. The members shall include each Town  
40 Supervisor or designee, a representative of village government to be  
41 jointly selected by the villages in the Peconic Bay region and five (5)  
42 members to be selected by the state legislative representatives repres-  
43 enting the Peconic Bay region with expertise in land preservation, envi-  
44 ronmental protection, water quality protection, agriculture, historic  
45 preservation, or parks and recreation. The committee shall elect a chair  
46 from among its members. Said committee shall meet at least quarterly  
47 each year. The office of regional community preservation fund counsel  
48 shall attend the meetings of the committee and shall be further avail-  
49 able to the committee chair for additional consultations. The committee  
50 shall be empowered to establish the rules for its operation, consistent  
51 with this section.

52 (c) The office and committee required to be established pursuant to  
53 this subdivision shall be implemented no later than ninety days after  
54 the effective date of this subdivision.

55 § 7. This act shall take effect immediately.