

STATE OF NEW YORK

9065--A

Cal. No. 1587

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 -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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 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; (5) the construction of public water mains and connections to provide drinking water to inhabitants whose drinking water supply has been contaminated by toxic chemicals as defined in section 37-0301 of the environmental~~

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

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~~conservation law, hazardous substances as defined in section 40-0105 of the environmental conservation law or emerging contaminants as defined in section eleven hundred twelve of the public health law; and (6) the operation of the Peconic Bay National Estuary Program, as designated by the United States Environmental Protection Agency; and (6) a septic system replacement loan program, pursuant to section sixty four ee of the town law. 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]~~ projects designed to improve the quality of drinking and surface waters and projects, including operational expenses, related to the operation of the Peconic Bay National Estuary Program, as designated by the United States Environmental Protection Agency.

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

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

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

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

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

1 taking any of the aforementioned in furtherance of the establishment of
2 a greenbelt. Preservation of community character shall also include the
3 protection and improvement of the quality of all water resources.

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

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

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

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

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

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

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

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

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

51 (c) Expenses related to the customary operation and maintenance of
52 acquired interests or rights in real property shall not be permitted
53 from the management and stewardship portion of the fund, except that in
54 the case of historic properties, where the town has entered into an
55 agreement with a not-for profit corporation for the management of such
56 properties as permitted by subdivision nine of this section, up to twen-

1 ty (20) percent of the management and stewardship portion of the fund or
2 two (2) percent of the total annual revenue of the fund, may be dedi-
3 cated to the operation and maintenance of stewardship properties managed
4 by such corporations. Where a town enters into an agreement for the
5 management of an historic property with a not-for-profit corporation and
6 the town allocates management and stewardship funds for the operation
7 and maintenance of such historic property, said corporation shall annu-
8 ally provide for a full accounting of such funds to the town board.

9 (d) Any project funded pursuant to this subdivision, except operation
10 and maintenance expenses permitted pursuant to paragraph (c) of this
11 subdivision, must have a useful life of five years or more under section
12 11.00 of the local finance law.

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

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

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

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

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

26 (c) to hire employees necessary to implement the provisions of this
27 section.

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

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

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

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

4 § 7. This act shall take effect immediately.