STATE OF NEW YORK

3990--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to authorizing designated cities and towns to establish community preservation funds; and to amend the tax law, in relation to authorizing towns to impose a real estate transfer tax with revenues therefrom to be deposited in such community preservation funds

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

Section 1. The general municipal law is amended by adding a new section 6-t to read as follows:

§ 6-t. Community preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:

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

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

(c) "Designated city or town" means a city outside of a city with a population of one million or more, or a town.

(d) "Governing body" or "local governing body" means a city council, town board, or other similar group of officials elected to administer local laws.

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

(f) "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 fourteen of article seventeen of the environmental conservation law, section 1455b of the federal coastal zone management act, or article forty-two of the executive law; (3)

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

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aquatic habitat restoration projects; or (4) pollution prevention projects. 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.

(g) "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.

(h) "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.

(i) "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.

(j) "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.

(k) "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.

2. The local governing body of any designated city or town is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such city or town pursuant to article thirty-three-C of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred

pursuant to the local finance law consistent with effectuating the purposes of this section.

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 designated city or town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of the town law, (d) to provide a management and stewardship program for such interests and rights consistent with subdivision nine of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to implement water quality improvement projects in accordance with a plan to preserve community character. If the implementation of the community preservation project plan, adopted by a local governing body, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section. Preliminary and incidental costs in connection with the acquisition of interests or rights in real property, pursuant to this subdivision, shall be deemed part of the cost of the acquisition for which they were incurred. Such expenditures may include any administrative or other expenditures directly arising therefrom. No expenditure shall be charged to the fund, unless authorized by law. A full accounting of such costs for each acquisition of land shall be provided to the local governing body.

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands provided, however, that farm buildings and structures used for the marketing of farm products produced on such agricultural lands where at least fifty percent of the gross annual income results from sales of products produced on such lands and, in addition the sale of any other locally sourced and/or produced food and plant products shall be permitted; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline including those at significant risk of coastal flooding due to projected sea level rise and future storms; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt. Preservation of community character shall also include the protection and improvement of the quality of all water resources.

5. The governing body of any designated city or town which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property or water quality improvement projects using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation and land preservation activities or water quality improvement activities. The board shall act in an advisory capacity to the local governing body.

6. The governing body of any designated city or town which has established a community preservation fund shall, by local law, adopt a community preservation project plan. This plan shall list every project which the city or town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the city or town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in the plan. The plan shall establish the priorities for preservation. Said plan shall also list every water quality improvement project which the city or town plans to undertake pursuant to the community preservation fund and shall state how such project would improve existing water quality. Projects which have as their purpose the accommodation of new growth as opposed to the remediation of water quality shall not qualify for funding under this section. Funds from the community preservation fund may only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years. Said plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fifteen hundred seventy-six of the tax law. As part of, or in addition, to said community preservation fund project plan, each local governing body may also adopt a management and stewardship plan for interests or rights in real property acquired pursuant to this section. No monies from the fund shall be expended for management and stewardship, except as approved in said plan. Said plan may provide management and stewardship projects for up to a three year period and shall provide a description and estimated cost for each project. Said plan shall be approved and adopted by local law and may be updated from time to time at the discretion of the local governing body. Only management and stewardship projects permitted pursuant to subdivision nine of this section shall be eligible to be included in the plan.

7. The governing body of any designated city or town which has established a community preservation fund pursuant to this section shall study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of the town law. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the city or town may utilize monies from the community preservation fund in order to create and fund a central bank of the

transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the city or town, all monies from the central bank shall be returned to the community preservation fund.

8. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of this chapter; provided, however, that nothing in this section shall prevent the local governing body from entering into a conditional purchase agreement before a public hearing is held. Any resolution of a local governing body approving an acquisition of land pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the city or town.

9. Lands acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. In furthering the purposes of this section, the city or town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less 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 city or town that public accessibility would be detrimental to the lands or any natural resources associated therewith. 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 this subdivision, or (3) restoration of acquired real property to its natural state including the demolition of existing buildings and structures. 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. Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the fund. 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. Noth-

ing in this section shall preclude a designated city or 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 city or town acquired pursuant to this section, where said sale is made by a central bank created by a city or town, pursuant to a transfer of development rights program established by a town pursuant to section two hundred sixty-one-a of the town law, 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, designated cities or towns may enter into inter-municipal agreements pursuant to article five-G of this chapter 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 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 city's or town's fund, and (d) to hire employees necessary to implement the provisions of this section.

12. Each designated city or town which has established a community preservation fund shall annually commission an independent audit of the fund. The audit shall be conducted by an independent certified public accountant or an independent public accountant. Said audit shall be performed by a certified public accountant or an independent public accountant other than the one that performs the general audit of each city's or town's finances. Such audit shall be an examination of the fund and shall determine whether the fund has been administered consistent with the provisions of this section and all other applicable provisions of state law. Said audit shall be initiated within sixty days of the close of the fiscal year of each city or town and shall be completed within one hundred twenty days of the close of the fiscal year. A copy of the audit shall be submitted annually to the state comptroller and the city or town clerk. A copy of the audit shall be made available to the public within thirty days of its completion. A notice of the completion of the audit shall be published in the official newspaper of the city or town and posted on the official sign board of the city or town within ten days of its filing with the town clerk. Said audit and notice shall also be posted on the internet site for the city or town. The cost of the audit may be a charge to the fund.

13. The cost of employees and independent contractors to implement the provisions of this section may only be paid for by the fund where the duties and responsibilities of said employees and independent contractors are directly dedicated to implementing the provisions of this section. Where such employees and independent contractors are not exclusively dedicated to implementing the provisions of this section, no more than the cost of the actual time expended directly dedicated to implementing the provisions of this section may be charged. Such costs shall be expressly identified in the city or town budget and any plan adopted pursuant to this section before funds for such costs may be expended. In addition, such costs must be documented by a time account-

ing system, subject to audit. Costs relating to the activities of elected officials implementing the purposes of this section may not be a charge to the fund.

§ 2. The tax law is amended by adding a new article 33-C to read as follows:

ARTICLE 33-C

TAX ON REAL ESTATE TRANSFERS IN CITIES OR TOWNS

Section 1575. Definitions.
1576. Imposition of tax.
1577. Payment of tax.
1578. Liability for tax.
1579. Exemptions.
1580. Credit.
1581. Cooperative housing corporation transfers.
1582. Designation of agents.
1583. Liability of recording officer.
1584. Deposit and disposition of revenue.
1585. Judicial review.
1586. Apportionment.
1587. Miscellaneous.
1588. Returns to be secret.

§ 1575. Definitions. When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within any city or town. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase

or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air

space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section six-t of the general municipal law.

10. "Recording officer" means the county clerk.

11. "City or town" means a municipal corporation comprising the inhabitants within its boundaries, and formed for the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as have been, or, may be conferred or imposed upon it by law and has a population of one million or fewer persons.

12. "Treasurer" means the county treasurer.

§ 1576. Imposition of tax. Notwithstanding any other provisions of law to the contrary, any city or town, acting through its local governing body, is hereby authorized and empowered to adopt a local law imposing in such city or town a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of up to two percent of the consideration for such conveyance. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Such local law shall only be submitted for the approval of the electors at a general election. Notwithstanding the foregoing, prior to adoption of such local law, the city or town must establish a community preservation fund pursuant to section six-t of the general municipal law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such local governing body, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1577. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article

thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

§ 1578. Liability for tax. 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1579. Exemptions. 1. The following shall be exempt from the payment of the real estate transfer tax: (a) the state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or Dominion of Canada); and (b) the United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances: (a) conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada); (b) conveyances which are or were used to secure a debt or other obligation; (c) conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded; (d) conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts; (e) conveyances given in connection with a tax sale; (f) conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings; (g) conveyances which consist of a deed of partition; (h) conveyances given pursuant to the federal bankruptcy act; (i) conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the

granting of an option to purchase real property without the use or occupancy of such property; (j) conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions: (1) agricultural, conservation, scenic, or an open space easement, (2) covenants or restrictions prohibiting development, (3) a purchase of development rights agreement, (4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed, (5) said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to article twenty-five-AA of the agriculture and markets law, (6) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article; (k) conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least three years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the city or town simultaneously with the conveyance of the real property; or (l) conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption which is equal in value to the residential median sale price of the county in which the city or town is located according to the office of real property services, shall be allowed on the consideration of the conveyance of improved real property or an interest therein.

§ 1580. Credit. A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1581. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fifteen hundred seventy-five of this article or anything to the contrary contained in subdivision five of section fifteen hundred seventy-five of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential

unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1582. Designation of agents. The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fifteen hundred seventy-seven of this article.

§ 1583. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1584. Deposit and disposition of revenue. 1. All taxes, penalties and interest imposed by the city or town under the authority of section fifteen hundred seventy-six of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust

fund for the city or town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the city or town, under the authority of section fifteen hundred seventy-six of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the city comptroller or the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fifteen hundred seventy-six of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the city comptroller or the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the city or town in any such distribution is more or less than the amount due to the city or town, the amount of the overpayment or underpayment shall be certified to the city comptroller or the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the city comptroller or the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to such city or town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and city comptroller or town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the city or town, pursuant to section six-t of the general municipal law.

§ 1585. Judicial review. 1. Any final determination of the amount of any tax payable under section fifteen hundred seventy-eight of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of insurance as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed

or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 1586. Apportionment. A local law adopted by any city or town, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the city or town.

§ 1587. Miscellaneous. A local law adopted by any city or town, pursuant to this article, may contain such other provisions as the city or town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1588. Returns to be secret. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county, city or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. Provided, however, that nothing in this section shall prohibit the recording officer from making a notation on an instrument affecting a conveyance indicating the amount of tax paid. No recorded instrument affecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county, city, or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county, city, or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any

of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing in this section shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county, city, or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

§ 3. Severability. If any provision of this act or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4. This act shall take effect immediately.