

# STATE OF NEW YORK

---

4040--A

2019-2020 Regular Sessions

## IN SENATE

February 26, 2019

---

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the town law and the tax law, in relation to authorizing towns in the Peconic Bay region to establish community housing funds to be funded by a supplemental real estate transfer tax

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

1 Section 1. Legislative findings. The legislature hereby finds that  
2 critical to the future of the Peconic Bay region is the need for an  
3 adequate supply of housing opportunities for all segments of the Peconic  
4 Bay community.

5 The adverse impact resulting from the lack of housing opportunities is  
6 severe. Local employers are having difficulty hiring and retaining  
7 employees because of housing costs and availability. Local volunteer  
8 emergency services agencies are experiencing difficulty in recruitment  
9 and retention. Long-time residents are forced to leave the area. Traf-  
10 fic congestion is intensified by the importation of labor from areas  
11 with lower housing costs. Finally, the lack of housing opportunities is  
12 resulting in residents being forced to live in substandard, illegal  
13 conditions.

14 The unique demographics and economics in the Peconic Bay region and a  
15 lack of affordable dwelling units are contributing to this housing shor-  
16 tage. The combination of the Peconic Bay region's attractiveness, prox-  
17 imity to the dense population of the New York metropolitan region and to  
18 that region's extraordinary wealth, makes the Peconic Bay region a prime  
19 location for seasonal and luxury homes. While this combination of  
20 extraordinary attractiveness, population density, and wealth has created  
21 a strong local economy for the Peconic Bay region, it has resulted in a

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

LBD03159-14-9

1 housing crisis for local families. In the Peconic Bay region, more than  
2 40% of all housing units are seasonal.

3 In summary, the demand of land for luxury and seasonal homes and  
4 seasonal rentals has left a short supply of housing opportunities for  
5 moderate income and working class local residents. The implementation of  
6 the new federal tax bill will only exacerbate this problem by making it  
7 more difficult for first time homebuyers by imposing a \$10,000 cap on  
8 the deductibility of state and local taxes and by reducing the mortgage  
9 interest deduction on new mortgages. The Peconic Bay region requires a  
10 balanced housing policy where there exists a variety of housing types  
11 and opportunities across the region's economic spectrum.

12 It is the public purpose of this legislation to give the towns of the  
13 Peconic Bay region the authority and resources needed to establish a  
14 dedicated fund to provide needed housing opportunities. Specifically,  
15 this legislation would permit each town to establish a community housing  
16 fund to increase housing opportunities in the region. Further, a town  
17 housing plan adhering to smart growth principles would be required to be  
18 approved and implemented to insure that these new housing opportunities  
19 are enacted in the context of a comprehensive plan. The fund shall be  
20 enacted by local law subject to a mandatory referendum.

21 Said fund would be financed by a combination of state and local funds,  
22 including a 0.5% supplemental real estate transfer tax, which would be  
23 in addition to the existing 2% real estate transfer tax for the Peconic  
24 Bay region community preservation fund.

25 In addition, the exemption amounts from the total real estate transfer  
26 tax would be increased to \$400,000 in the towns of Southampton, East  
27 Hampton and Shelter Island and to \$280,000 in the towns of Riverhead and  
28 Southold. This will insure that in the towns of East Hampton, Southamp-  
29 ton, and Shelter Island, the real estate transfer tax will be reduced  
30 from current law for property transfers with a consideration under  
31 \$1,000,000. The real estate transfer tax would be reduced from current  
32 law in the towns of Southold and Riverhead for property transfers with a  
33 consideration under \$800,000. Finally, the purchase price limit for the  
34 exemption for first time homebuyers in the towns of East Hampton, South-  
35 ampton and Shelter Island would be increased from 120% to 150% of the  
36 purchase price limit defined by the state of New York mortgage agency.  
37 These amendments to the exemptions will reduce any adverse impact from  
38 the transfer tax on the provision of community housing.

39 § 2. This act shall be known and may be cited as the "Peconic Bay  
40 region community housing act".

41 § 3. The town law is amended by adding a new section 64-k to read as  
42 follows:

43 § 64-k. Peconic Bay region community housing fund. 1. Definitions. As  
44 used in this section, the following words and terms shall have the  
45 following meanings:

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

48 (b) "Community housing" means a primary residential property for an  
49 eligible individual that does not exceed one hundred fifty percent of  
50 the purchase price limits established by the state of New York mortgage  
51 agency low interest rate loan program in non-target categories for  
52 Suffolk county in effect on the contract date for the sale of such prop-  
53 erty.

54 (c) "Board" means the advisory board created pursuant to subdivision  
55 six of this section.

1 (d) "Fund" means the community housing fund authorized pursuant to  
2 subdivision two of this section.

3 (e) "First-time homebuyer" means an eligible individual who has not  
4 owned a primary residential property and is not married to a person who  
5 has owned a residential property during the three-year period prior to  
6 his or her purchase of the primary residential property, and who does  
7 not own a vacation or investment home.

8 (f) "Primary residential property" means any one or two family house,  
9 townhouse, or condominium.

10 (g) "Eligible individual" means a household with an income that does  
11 not exceed one hundred percent of the income limits as established by  
12 the state of New York mortgage agency low interest rate loan program in  
13 non-target categories for Suffolk county in effect on the contract date  
14 for the sale of such property.

15 2. Fund authorized. The town board of any town in the Peconic Bay  
16 region is authorized to establish by local law a community housing fund,  
17 pursuant to the provisions of this section. Deposits into the fund may  
18 include revenues of the local government from whatever source, including  
19 but not limited to: (a) all revenues from the supplemental real estate  
20 transfer tax authorized by subdivision two of section fourteen hundred  
21 forty-nine-bb of the tax law; (b) all proceeds from any indebtedness or  
22 obligations issued pursuant to the local finance law for community hous-  
23 ing opportunity purposes as authorized in subdivision three of this  
24 section; (c) general fund balances or surpluses; (d) any proceeds  
25 received by the local government from the sale or rental of community  
26 housing produced from revenues of the fund; (e) the repayment of any  
27 loans issued from proceeds of the fund; (f) any gifts of interests in  
28 land or funds; (g) any state or federal grants received by the town for  
29 providing affordable homes.

30 3. Purposes of the fund. The proceeds of the fund established pursuant  
31 to subdivision two of this section shall be utilized for the following  
32 purposes:

33 (a) the provision of financial assistance to first-time homebuyers who  
34 are residents of the town for the purchase of a first home. Said finan-  
35 cial assistance may be in the form of grants or loans.

36 (1) A town may provide financial assistance to a first-time homebuyer  
37 who is a resident of the town or who is employed in the town for the  
38 purchase of a first home. A resident of the town shall include a person  
39 who is currently a resident of the town or a non-resident who has been a  
40 resident within the past five years.

41 (2) Said financial assistance shall not exceed fifty percent of the  
42 purchase price of the home.

43 (3) If said financial assistance is in the form of a loan, said loan  
44 shall be repayable to the town pursuant to the terms agreed to between  
45 the recipient and the town, provided that, at a minimum, any loan shall  
46 be fully repaid by the recipient upon the resale of the home.

47 (4) For the purposes of calculating town tax liability for such prop-  
48 erty, only, the dollar amount of any financial assistance for the  
49 purchase of a first home made by the town pursuant to this section shall  
50 be subtracted from the full equalized assessed value of such property.

51 (5) All revenues received by the town from the repayment of a loan  
52 shall be deposited in the fund.

53 (6) A town may provide financial assistance for community housing in  
54 conjunction with a public/private partnership for employer assisted  
55 housing.

1 (b) the actual production of community housing for sale to eligible  
2 individuals by the town;

3 (c) the actual production of community housing for sale to eligible  
4 individuals in conjunction with a public/private partnership, where the  
5 private partner agrees to comply with the profit guidelines of the New  
6 York state affordable housing corporation and the provisions of this  
7 section;

8 (d) the actual production and maintenance of community housing for  
9 rental to eligible individuals either by the town or the town housing  
10 authority; or in conjunction with a public/private partnership, where  
11 the private partner agrees to comply with the profit guidelines of the  
12 New York state affordable housing corporation and the provisions of this  
13 section;

14 (e) the rehabilitation of existing buildings and structures in the  
15 town for the purpose of conversion to community housing for sale or  
16 rental to eligible individuals; and

17 (f) the provision of housing counseling services by not-for-profit  
18 corporations who are authorized by the United States department of hous-  
19 ing and urban development to provide such services.

20 4. Fund management. Interest accrued by monies deposited into the fund  
21 shall be credited to the fund. In no event shall monies deposited into  
22 the fund be transferred to any other account. Nothing contained in this  
23 section shall be construed to prevent the financing in whole or in part,  
24 pursuant to the local finance law, of any purpose authorized pursuant to  
25 this section. Monies from the fund may be utilized to repay indebtedness  
26 or obligations incurred pursuant to the local finance law consistent  
27 with effectuating the purposes of this section.

28 5. Eligible expenses. For the purposes of this section, eligible  
29 expenses relating to the production of community housing and the reha-  
30 bilitation of existing buildings and structures under the fund shall  
31 include but not be limited to land acquisition, planning, engineering,  
32 construction costs, and other hard and soft costs directly related to  
33 the construction, rehabilitation, purchase or rental of housing pursuant  
34 to this section. All revenues received by the town from the sale or  
35 rental of community homes, or the repayment of loans shall be deposited  
36 in the fund.

37 6. Advisory board established. The town board of any town in the  
38 Peconic Bay region which has established a community housing fund pursu-  
39 ant to this section shall create an advisory board to review and make  
40 recommendations regarding the town's community housing plan required by  
41 subdivision seven of this section. Such board shall consist of not less  
42 than seven nor more than fifteen legal residents of the municipality who  
43 shall serve without compensation. No member of the local legislative  
44 body shall serve on the board. The board shall include a representative  
45 of: (a) the construction industry; (b) the real estate industry; (c) the  
46 banking industry; and three representatives of local housing advocacy or  
47 human services organizations. Where a village or villages, located with-  
48 in the town, have elected to participate in the fund, as provided in  
49 subdivision seven of this section, the board shall include at least one  
50 resident of a participating village or villages. Where an Indian nation  
51 is located within the boundaries of a town, the board shall include at  
52 least one member from such nation. The board shall act in an advisory  
53 capacity to the town board.

54 7. Adoption of housing plan. (a) Before a town in the Peconic Bay  
55 region may establish the fund, the town board shall first adopt a town  
56 housing plan which establishes an implementation plan for the provision

1 of community housing opportunities by the fund. Said plan shall be  
2 adopted by local law. Such plan shall adhere to the following smart  
3 growth principles:

4 (1) Public investment. To account for and minimize social, economic,  
5 and environmental costs of new development, including infrastructure  
6 costs such as transportation, sewers, and wastewater treatment, water,  
7 schools, recreation, and loss of open space and agricultural land;

8 (2) Development. To encourage development in areas where transporta-  
9 tion, water, and sewage infrastructure are available or practical;

10 (3) Conservation. To protect, preserve, and enhance the state's  
11 resources, including agricultural land, forests, surface waters, ground-  
12 water, recreation and open space, scenic areas, and significant historic  
13 and archeological sites;

14 (4) Coordination. To promote coordination of state and local govern-  
15 ment decisions and cooperation among communities to work toward the most  
16 efficient, planned and cost-effective delivery of government services  
17 by, among other means, facilitating cooperative agreements among adja-  
18 cent communities, and to coordinate planning to ensure compatibility of  
19 one's community development with development of neighboring communities;

20 (5) Community design. To strengthen communities through development  
21 and redevelopment strategies that include integration of all income and  
22 age groups, mixed land uses, and compact development, traditional neigh-  
23 borhood development, planned unit development, open space districts,  
24 downtown revitalization, brownfield redevelopment, enhanced beauty in  
25 public spaces, and diverse and community housing in close proximity to  
26 places of employment, recreation, and commercial development;

27 (6) Transportation. To provide transportation choices, including  
28 increasing public transit and alternative modes of transportation, in  
29 order to reduce automobile dependency, traffic congestion, and automo-  
30 bile pollution;

31 (7) Consistency. To ensure predictability in building and land use  
32 codes; and

33 (8) Community collaboration. To provide for and encourage local  
34 governments to develop, through a collaborative community-based effort,  
35 smart growth plans that include long term land use and permit predict-  
36 ability and coordination, efficient decision making and planning imple-  
37 mentation.

38 (b) Such plan may include the establishment of a map or maps that  
39 delineate the housing implementation recommendations proposed by the  
40 town.

41 (c) Such plan shall be updated at least once every five years. Such  
42 plan and local law shall be adopted at least sixty days before the  
43 mandatory referendum required by subdivision ten of this section.

44 (d) The town housing plan shall be an element of the town's comprehen-  
45 sive plan.

46 (e) Such plan shall ensure that all community housing created pursuant  
47 to this section remains affordable. Subsequent purchasers of such  
48 community housing shall have at the time of purchase, pursuant to the  
49 definition "eligible individual", an income that does not exceed one  
50 hundred percent of the income limits as established by the state of New  
51 York mortgage agency low interest rate loan program in non-target cate-  
52 gories for Suffolk county.

53 (f) Such plan shall provide for the equitable distribution of communi-  
54 ty housing opportunities among all the communities of the town. The plan  
55 shall ensure that no community is sited for an undue concentration of  
56 community housing opportunities that would substantially alter the char-



acter of the community. In determining equitable distribution of community housing opportunities, existing community housing opportunities in a community shall be considered.

8. Village participation. (a) The participation of any village in the community housing program authorized by this section shall be at the option of the village. In order to participate, a village shall pass a resolution opting into the program and shall submit said resolution to the town board.

(b) Where a village opts to participate pursuant to this subdivision, an intergovernmental agreement shall be executed pursuant to article five-G of the general municipal law or other applicable legal authority, in order to establish the rights and responsibilities of each government regarding community housing opportunities.

9. Intermunicipal agreements. Notwithstanding any provision of law to the contrary, towns in the Peconic Bay region may enter into intermunicipal agreements pursuant to article five-G of the general municipal law for purposes consistent with this section.

10. Mandatory referendum. The local law or laws adopting the housing plan and establishing the community housing fund shall be subject to a mandatory referendum. Such local law or laws shall only become effective upon the adoption of said referendum by the electors of the town.

§ 4. Section 1449-bb of the tax law, as added by chapter 114 of the laws of 1998, is amended to read as follows:

§ 1449-bb. Imposition of tax. 1. Notwithstanding any other provisions of law to the contrary, any town in the Peconic Bay region, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of 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. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-e of the town 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 town board, 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.

2. Notwithstanding any other provisions of law to the contrary, in addition to the tax authorized by subdivision one of this section, any town in the Peconic Bay region, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a supplemental tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of one half of one percent of the consideration for such conveyance. Provided, however, any such local law imposing, repealing or re-imposing such supplemental tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community housing fund pursuant to section sixty-four-k of the town

1 law. Revenues from such supplemental tax shall be deposited in such  
2 fund and may be used solely for the purposes of such fund. Such local  
3 law shall apply to any conveyance occurring on or after the first day of  
4 a month to be designated by such town board, which is not less than  
5 sixty days after the enactment of such local law, but shall not apply to  
6 conveyances made on or after such date pursuant to binding written  
7 contracts entered into prior to such date, provided that the date of  
8 execution of such contract is confirmed by independent evidence such as  
9 the recording of the contract, payment of a deposit or other facts and  
10 circumstances as determined by the treasurer. Any tax imposed pursuant  
11 to this subdivision shall be administered and collected in a like manner  
12 as the tax imposed by subdivision one of this section.

13 § 5. Subdivision 3 of section 1449-ee of the tax law, as added by  
14 chapter 114 of the laws of 1998, is amended to read as follows:

15 3. (a) In the towns of East Hampton, Shelter Island and Southampton,  
16 an exemption of [~~two~~] four hundred [~~fifty~~] thousand dollars shall be  
17 allowed on the consideration of the conveyance of improved real property  
18 or an interest therein and an exemption of one hundred thousand dollars  
19 shall be allowed on the consideration of the conveyance of unimproved  
20 real property.

21 (b) In the towns of Riverhead and Southold, an exemption of [~~one~~] two  
22 hundred [~~fifty~~] eighty thousand dollars shall be allowed on the consid-  
23 eration of the conveyance of improved real property or an interest ther-  
24 ein and an exemption of seventy-five thousand dollars shall be allowed  
25 on the consideration of the conveyance of unimproved real property.

26 (c) The provisions of this subdivision shall only apply to conveyances  
27 for residential property where the consideration is two million dollars  
28 or less.

29 § 6. Subparagraph 1 of paragraph (a) of subdivision 4 of section  
30 1449-ee of the tax law, as amended by chapter 389 of the laws of 2014,  
31 is amended to read as follows:

32 (1) in the towns of Southampton, East Hampton and Shelter Island, the  
33 primary residential property is within one hundred [~~twenty~~] fifty  
34 percent of the purchase price limits defined by the state of New York  
35 mortgage agency low interest rate mortgage program in the non-target one  
36 family categories for Suffolk county in effect on the contract date for  
37 the sale of such property;

38 § 7. Severability clause. If any provision of this act or application  
39 thereof shall for any reason be adjudged by any court of competent  
40 jurisdiction to be invalid, such judgment shall not affect, impair, or  
41 invalidate the remainder of the act, but shall be confined in its opera-  
42 tion to the provision thereof directly involved in the controversy in  
43 which the judgment shall have been rendered.

44 § 8. This act shall take effect immediately; provided, however, that  
45 the amendments to sections 1449-bb and 1449-ee of the tax law, made by  
46 sections four, five, and six of this act shall not affect the repeal of  
47 article 31-D of the tax law and shall be deemed to be repealed there-  
48 with.