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:

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

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

The unique demographics and economics in the Peconic Bay region and a lack of affordable dwelling units are contributing to this housing shortage. The combination of the Peconic Bay region's attractiveness, proximity to the dense population of the New York metropolitan region and to that region's extraordinary wealth, makes the Peconic Bay region a prime location for seasonal and luxury homes. While this combination of extraordinary attractiveness, population density, and wealth has created 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.

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

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

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

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

In addition, the exemption amounts from the total real estate transfer tax would be increased to $400,000 in the towns of Southampton, East Hampton and Shelter Island and to $280,000 in the towns of Riverhead and Southold. This will insure that in the towns of East Hampton, Southampton, and Shelter Island, the real estate transfer tax will be reduced from current law for property transfers with a consideration under $1,000,000. The real estate transfer tax would be reduced from current law in the towns of Southold and Riverhead for property transfers with a consideration under $800,000. Finally, the purchase price limit for the exemption for first time homebuyers in the towns of East Hampton, Southampton and Shelter Island would be increased from 120% to 150% of the purchase price limit defined by the state of New York mortgage agency. These amendments to the exemptions will reduce any adverse impact from the transfer tax on the provision of community housing.

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

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

§ 64-k. Peconic Bay region community housing fund. 1. Definitions. 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 housing" means a primary residential property for an eligible individual that does not exceed one hundred fifty percent of the purchase price limits established by the state of New York mortgage agency low interest rate loan program in non-target categories for Suffolk county in effect on the contract date for the sale of such property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Fund management. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited into 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 purpose authorized pursuant to this section. Monies from the fund may be utilized to repay indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

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

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

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

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

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

(2) Development. To encourage development in areas where transportation, water, and sewage infrastructure are available or practical;

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

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

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

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

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

(8) Community collaboration. To provide for and encourage local governments to develop, through a collaborative community-based effort, smart growth plans that include long term land use and permit predictability and coordination, efficient decision making and planning implementation.

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

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

(d) The town housing plan shall be an element of the town's comprehensive plan.

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

(f) Such plan shall provide for the equitable distribution of community housing opportunities among all the communities of the town. The plan shall ensure that no community is sited for an undue concentration of 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

law. Revenues from such supplemental 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. Any tax imposed pursuant to this subdivision shall be administered and collected in a like manner as the tax imposed by subdivision one of this section.

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

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

(b) In the towns of Riverhead and Southold, an exemption of [~~one~~] two hundred [~~fifty~~] eighty thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an interest therein and an exemption of seventy-five thousand dollars shall be allowed on the consideration of the conveyance of unimproved real property.

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

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

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

§ 7. Severability clause. If any provision of this act or 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 the act, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered.

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