

STATE OF NEW YORK

4040

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

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
22 housing crisis for local families. In the Peconic Bay region, more than
23 40% of all housing units are seasonal.

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

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

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

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

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

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

27 § 64-k. Peconic Bay region community housing fund. 1. Definitions. As
28 used in this section, the following words and terms shall have the
29 following meanings:

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

32 (b) "Community housing" means a primary residential property for a
33 household with an income that does not exceed one hundred percent of the
34 income limits and one hundred fifty percent of the purchase price
35 limits. The income limits and purchase price limits shall be as estab-
36 lished by the state of New York mortgage agency low interest rate loan
37 program in non-target categories for Suffolk county in effect on the
38 contract date for the sale of such property.

39 (c) "Board" means the advisory board created pursuant to this section.

40 (d) "Fund" means the community housing fund authorized pursuant to
41 this section.

42 (e) "First home" means a person who has not owned a primary residen-
43 tial property and is not married to a person who has owned a residential
44 property during the three-year period prior to his or her purchase of
45 the primary residential property, and who does not own a vacation or
46 investment home.

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

49 (g) "Education impact payment" means an annual payment made from the
50 fund to school districts not to exceed an amount equal to the additional
51 annual real property tax impact of educating the number of students that
52 will be added to a school district as a result of the production of
53 community housing, pursuant to the fund. Such annual payments shall not
54 exceed five years.

55 2. Fund authorized. The town board of any town in the Peconic Bay
56 region is authorized to establish by local law a community housing fund,

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

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

17 (a) the provision of no-interest loans to eligible residents of the
18 town for the purchase of a first home.

19 (1) A town may make a loan to a resident of the town or a person
20 employed in the town for the purchase of a first home. A resident of the
21 town shall include a person who is currently a primary resident of the
22 town or a non-resident who has been a primary resident within the past
23 five years.

24 (2) Said loan shall not exceed fifty percent of the purchase price of
25 the home.

26 (3) Said loan shall be repayable to the town upon the re-sale of the
27 home.

28 (4) The repayment to the town shall be an amount equal to the propor-
29 tion of the original loan from the town to the original purchase price
30 to the resale price multiplied by the re-sale purchase price.

31 (5) For the purposes of calculating town tax liability for such prop-
32 erty, only, the dollar amount of any loan for the purchase of a first
33 home made by the town pursuant to this section shall be subtracted from
34 the full equalized assessed value of such property.

35 (6) All revenues received by the town from the repayment of loans
36 shall be deposited in the fund.

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

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

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

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

52 (f) the provision of housing counseling services by not-for-profit
53 corporations who are authorized by the United States department of hous-
54 ing and urban development to provide such services; and

55 (g) the provision of education impact payments to school districts as
56 defined in paragraph (g) of subdivision one of this section.

1 (h) The town shall have the authority to enact rules and regulations
2 to facilitate the provisions and purposes of this section.

3 4. Fund management. Interest accrued by monies deposited into the fund
4 shall be credited to the fund. In no event shall monies deposited into
5 the fund be transferred to any other account. Nothing contained in this
6 section shall be construed to prevent the financing in whole or in part,
7 pursuant to the local finance law, of any purpose authorized pursuant to
8 this section. Monies from the fund may be utilized to repay indebtedness
9 or obligations incurred pursuant to the local finance law consistent
10 with effectuating the purposes of this section.

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

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

37 7. Adoption of housing plan. (a) Before a town may establish the
38 fund, the town board shall first adopt a town housing plan which estab-
39 lishes an implementation plan for the provision of community housing
40 opportunities by the fund. Said plan shall be adopted by local law. Such
41 plan shall adhere to the following smart growth principles:

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

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

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

52 (4) Coordination. To promote coordination of state and local govern-
53 ment decisions and cooperation among communities to work toward the most
54 efficient, planned and cost-effective delivery of government services
55 by, among other means, facilitating cooperative agreements among adja-

cent 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 insure 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 provide for the legal mechanism that will be employed to maintain the housing stock created pursuant to this section at community housing eligibility levels. The re-sale of community housing created pursuant to this section to other than income eligible households shall be prohibited.

(f) Such housing plan shall provide for the equitable distribution of community housing opportunities among all the hamlets and communities of the town. The plan shall insure that no hamlet or community is sited for an undue concentration of community housing opportunities that would substantially alter the character of the hamlet or community. In determining equitable distribution of community housing opportunities, existing community housing opportunities in a hamlet or community shall be considered.

(g) Such housing plan shall include a regional housing strategy in conjunction with all other Peconic Bay towns for the purpose of meeting the regional housing needs in the Peconic Bay region.

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

(b) Where a village or Indian nation 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.

1 9. Regional housing strategy. Within one year of the effective date of
2 this section, the towns shall enter into an inter-municipal agreement
3 pursuant to article five-G of the general municipal law to jointly
4 implement a regional housing strategy, as provided for by paragraph (g)
5 of subdivision seven of this section, consistent with the purposes
6 enumerated in subdivision three of this section. At least twenty percent
7 of the annual revenues of each town fund shall be devoted to the imple-
8 mentation of this regional housing strategy.

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

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

15 § 1449-bb. Imposition of tax. 1. Notwithstanding any other provisions
16 of law to the contrary, any town in the Peconic Bay region, acting
17 through its town board, is hereby authorized and empowered to adopt a
18 local law imposing in such town a tax on each conveyance of real proper-
19 ty or interest therein where the consideration exceeds five hundred
20 dollars, at the rate of two percent of the consideration for such
21 conveyance. Provided, however, any such local law imposing, repealing
22 or reimposing such tax shall be subject to a mandatory referendum pursu-
23 ant to section twenty-three of the municipal home rule law. Notwith-
24 standing the foregoing, prior to adoption of such local law, the town
25 must establish a community preservation fund pursuant to section sixty-
26 four-e of the town law. Revenues from such tax shall be deposited in
27 such fund and may be used solely for the purposes of such fund. Such
28 local law shall apply to any conveyance occurring on or after the first
29 day of a month to be designated by such town board, which is not less
30 than sixty days after the enactment of such local law, but shall not
31 apply to conveyances made on or after such date pursuant to binding
32 written contracts entered into prior to such date, provided that the
33 date of execution of such contract is confirmed by independent evidence
34 such as the recording of the contract, payment of a deposit or other
35 facts and circumstances as determined by the treasurer.

36 2. Notwithstanding any other provisions of law to the contrary, in
37 addition to the tax authorized by subdivision one of this section, any
38 town in the Peconic Bay region, acting through its town board, is hereby
39 authorized and empowered to adopt a local law imposing in such town a
40 supplemental tax on each conveyance of real property or interest therein
41 where the consideration exceeds five hundred dollars, at the rate of one
42 half of one percent of the consideration for such conveyance. Provided,
43 however, any such local law imposing, repealing or re-imposing such
44 supplemental tax shall be subject to a mandatory referendum pursuant to
45 section twenty-three of the municipal home rule law. Notwithstanding the
46 foregoing, prior to adoption of such local law, the town must establish
47 a community housing fund pursuant to section sixty-four-k of the town
48 law. Revenues from such supplemental tax shall be deposited in such
49 fund and may be used solely for the purposes of such fund. Such local
50 law shall apply to any conveyance occurring on or after the first day of
51 a month to be designated by such town board, which is not less than
52 sixty days after the enactment of such local law, but shall not apply to
53 conveyances made on or after such date pursuant to binding written
54 contracts entered into prior to such date, provided that the date of
55 execution of such contract is confirmed by independent evidence such as

1 the recording of the contract, payment of a deposit or other facts and
2 circumstances as determined by the treasurer.

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

5 3. (a) In the towns of East Hampton, Shelter Island and Southampton,
6 an exemption of [~~two~~] four hundred [~~fifty~~] thousand dollars shall be
7 allowed on the consideration of the conveyance of improved real property
8 or an interest therein and an exemption of one hundred thousand dollars
9 shall be allowed on the consideration of the conveyance of unimproved
10 real property. This exemption shall also apply to any supplemental tax
11 imposed pursuant to subdivision two of section fourteen hundred forty-
12 nine-bb of this article.

13 (b) In the towns of Riverhead and Southold, an exemption of [~~one~~] two
14 hundred [~~fifty~~] eighty thousand dollars shall be allowed on the consid-
15 eration of the conveyance of improved real property or an interest ther-
16 ein and an exemption of seventy-five thousand dollars shall be allowed
17 on the consideration of the conveyance of unimproved real property.
18 This exemption shall also apply to any supplemental tax imposed pursuant
19 to subdivision two of section fourteen hundred forty-nine-bb of this
20 article.

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

24 § 6. Severability clause. If any provision of this act or application
25 thereof shall for any reason be adjudged by any court of competent
26 jurisdiction to be invalid, such judgment shall not affect, impair, or
27 invalidate the remainder of the act, but shall be confined in its opera-
28 tion to the provision thereof directly involved in the controversy in
29 which the judgment shall have been rendered.

30 § 7. This act shall take effect immediately; provided, however, that
31 the amendments to section 1449-bb of the tax law and subdivision 3 of
32 section 1449-ee of the tax law, made by sections four and five of this
33 act, respectively, shall not affect the repeal of article 31-D of the
34 tax law and shall be deemed to be repealed therewith.