STATE OF NEW YORK

7632

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. THIELE, BARRETT -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to authorizing cities and towns, except a city with a population of one million or more, to establish community preservation funds and community housing funds; and to amend the tax law, in relation to authorizing cities and towns, except a city with a population of one million or more, to impose a real estate transfer tax with revenues therefrom to be deposited in such 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-w to read as follows:

§ 6-w. 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) "City or town" means a city, except a city with a population of one million or more, or a town.

(d) "Governing body" means a city council or town board.

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

(f) "Water quality improvement project" means: (1) any project eligible for state funding under the clean water infrastructure fund of two thousand seventeen, pursuant to part T of chapter fifty-seven of the laws of two thousand seventeen or (2) any project eligible for state funding as a safe drinking water project or clean water project pursuant to title two or title three of article fifty-six of the environmental conservation law.

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

LBD10976-01-1

2. The governing body of any 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 subdivision one of section one thousand five hundred seventy-six 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 as permitted by 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 (10) 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 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 by the 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 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 beach lands 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; (n) preservation of lands necessary to protect fisheries and water dependent uses essential to maintain and enhance maritime heritage; and (o) 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 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 governing body.

6. The governing body of any 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. The plan shall be updated not less than once every five years and shall be completed at least sixty (60) 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 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 city or town which has established a community preservation fund pursuant to this section shall consider establishing a transfer of development rights program to protect community character consistent with state law. 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 governing body from entering into a conditional purchase agreement before a public hearing is held. Any resolution of a 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 conservation organizations formed under the not-for-profit corporation law and engaged 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 the governing body finds 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 state and federal 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. Nothing in this section shall preclude a 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 city or town, 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, 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 cities or 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 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 accounting 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 general municipal law is amended by adding a new section 6-x to read as follows:

§ 6-x. Community housing fund. 1. Definitions. As used in this section, the following words and terms shall have the following meanings:

(a) "City or town" means a city, except a city with a population of one million or more, or a town.

(b) "Community housing" means a primary residential property for an eligible individual. The governing body shall establish, by local law, purchase price limit for community housing, provided that limit shall 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 the county in effect on the contract date for the sale of such property. Community housing shall include apartments that are accessory to a legally established residential or commercial use.

(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, including accessory apartments.

(g) "Eligible individual" shall be defined by the governing body, by local law, provided that the definition of household income in such local law shall 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 the county in effect on the contract date for the sale of such property.

(h) "Governing body" means a city council or town board.

2. Fund authorized. Cities and towns are 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 one thousand five hundred seventy-six 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; and (g) any state or federal grants received by the city or 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 city or town for the purchase of a first home. Such financial assistance may be in the form of a grant or a loan and such program shall meet the following criteria:

(1) A city or town may provide financial assistance for the purchase of a first home to a first-time homebuyer who is a resident of the city or town or who is employed in the city or town. A resident of the city or 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) Such financial assistance shall not exceed fifty percent of the purchase price of the home.

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

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

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

(6) A city or 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 city or 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, including accessory apartments for rental to eligible individuals either by the city or town or its 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 city or town for the purpose of conversion to community housing for sale or rental to eligible individuals;

(f) the acquisition of interests in real property in existing housing stock, which will result in the production of community housing for sale or rental to eligible individuals; and

(g) 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 city or town from the sale or rental of community housing, or the repayment of loans shall be deposited in the fund.

6. Advisory board established. The governing body of any city or town 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 a town, elect to participate in the fund, as provided in subdivision eight 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 city or town, the board shall include at least one member from such nation. The board shall act in an advisory capacity to the governing body.

7. Adoption of housing plan. (a) Before a city or town may expend any funds pursuant to this section, the governing body shall first adopt a 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 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, 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.

(d) The housing plan shall be an element of the city or town comprehensive plan.

(e) Such plan shall ensure that all community housing, created pursuant to this section, remains affordable. Subsequent purchasers of such community housing, at the time of purchase, shall be eligible individuals as defined herein.

(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 has an undue concentration of community housing opportunities that would substantially alter the character 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, where there is a town community housing fund, in the production of community housing 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.

(c) Regardless of whether a village participates in the program authorized by this section, properties in the village shall be subject to the supplemental real estate transfer tax authorized by section fourteen hundred forty-nine-bb of the tax law.

§ 3. 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 prop-

erty 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-w of the general municipal law.

10. "Community housing fund" means a community fund created pursuant to section six-x of the general municipal law.

11. "Recording officer" means the county clerk.

12. "City or town" means a city or town, except a city of one million or more.

13. "Treasurer" means the county treasurer.

§ 1576. Imposition of tax. 1. 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 a 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-w 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.

2. Notwithstanding any other provisions of law to the contrary, in addition to the tax authorized by subdivision one of this section, any city or town, acting through its governing body, is hereby authorized and empowered to adopt a local law imposing in such city or town a supplemental tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of up to 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 six-x of the general municipal law. Revenues from such supplemental tax shall be deposited in such community housing fund and may be used solely for the purposes of such community housing fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by the governing 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.

§ 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 corpo-

ration 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, community housing, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, community housing or historic preservation purposes.

3. The governing body of a city or town, by local law may establish a community housing exemption. Such exemption may not exceed an amount equal to the residential median sale price of the county in which the city or town is located, as determined by the office of real property services within the department of taxation and finance. Such exemption shall be allowed on the consideration of the conveyance of improved real property or an interest therein. The exemption granted pursuant to the provisions of this subdivision shall only apply to conveyances for residential property where the consideration is two million dollars or less.

§ 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 trust funds as provided by this section for the city or town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. The treasurer or his or her agents shall provide for separate trust funds for community preservation and community housing revenues. 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 appropriate fund of the city or town, pursuant to section six-w or section six-x 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.

§ 4. 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.

§ 5. This act shall take effect immediately.