

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:

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

3 § 6-w. Community preservation funds. 1. As used in this section, the
4 following words and terms shall have the following meanings:

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

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

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

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

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

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

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

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1 2. The governing body of any city or town is authorized to establish
2 by local law a community preservation fund pursuant to the provisions of
3 this section. Deposits into the fund may include revenues of the local
4 government from whatever source and shall include, at a minimum, all
5 revenues from a tax imposed upon the transfer of real property interests
6 in such city or town pursuant to subdivision one of section one thousand
7 five hundred seventy-six of the tax law. The fund shall also be author-
8 ized to accept gifts of any such interests in land or of funds. Interest
9 accrued by monies deposited into the fund shall be credited to the fund.
10 In no event shall monies deposited in the fund be transferred to any
11 other account. Nothing contained in this section shall be construed to
12 prevent the financing in whole or in part, pursuant to the local finance
13 law, of any acquisition authorized pursuant to this section. Monies from
14 the fund may be utilized to repay any indebtedness or obligations
15 incurred pursuant to the local finance law consistent with effectuating
16 the purposes of this section.

17 3. The purposes of the fund shall be exclusively, (a) to implement a
18 plan for the preservation of community character as required by this
19 section, (b) to acquire interests or rights in real property for the
20 preservation of community character within the designated city or town
21 including villages therein in accordance with such plan and in cooper-
22 ation with willing sellers, (c) to establish a bank pursuant to a trans-
23 fer of development rights program as permitted by law, (d) to provide a
24 management and stewardship program for such interests and rights
25 consistent with subdivision nine of this section and in accordance with
26 such plan designed to preserve community character; provided that not
27 more than ten (10) percent of the fund shall be utilized for the manage-
28 ment and stewardship program, and (e) to implement water quality
29 improvement projects in accordance with a plan to preserve community
30 character. If the implementation of the community preservation project
31 plan, adopted by a governing body, as provided in subdivision six of
32 this section, has been completed, and funds are no longer needed for the
33 purposes outlined in this subdivision, then any remaining monies in the
34 fund shall be applied to reduce any bonded indebtedness or obligations
35 incurred to effectuate the purposes of this section. Preliminary and
36 incidental costs in connection with the acquisition of interests or
37 rights in real property, pursuant to this subdivision, shall be deemed
38 part of the cost of the acquisition for which they were incurred. Such
39 expenditures may include any administrative or other expenditures
40 directly arising therefrom. No expenditure shall be charged to the fund,
41 unless authorized by law. A full accounting of such costs for each
42 acquisition of land shall be provided by the governing body.

43 4. Preservation of community character shall involve one or more of
44 the following: (a) establishment of parks, nature preserves, or recre-
45 ation areas; (b) preservation of open space, including agricultural
46 lands provided, however, that farm buildings and structures used for the
47 marketing of farm products produced on such agricultural lands shall be
48 permitted; (c) preservation of lands of exceptional scenic value; (d)
49 preservation of fresh and saltwater marshes or other wetlands; (e) pres-
50 ervation of aquifer recharge areas; (f) preservation of undeveloped
51 beach lands or shoreline including those at significant risk of coastal
52 flooding due to projected sea level rise and future storms; (g) estab-
53 lishment of wildlife refuges for the purpose of maintaining native
54 animal species diversity, including the protection of habitat essential
55 to the recovery of rare, threatened or endangered species; (h) preserva-
56 tion of pine barrens consisting of such biota as pitch pine, and scrub

1 oak; (i) preservation of unique or threatened ecological areas; (j)
2 preservation of rivers and river areas in a natural, free-flowing condi-
3 tion; (k) preservation of forested land; (l) preservation of public
4 access to lands for public use including stream rights and waterways;
5 (m) preservation of historic places and properties listed on the New
6 York state register of historic places and/or protected under a munic-
7 pal historic preservation ordinance or law; (n) preservation of lands
8 necessary to protect fisheries and water dependent uses essential to
9 maintain and enhance maritime heritage; and (o) undertaking any of the
10 aforementioned in furtherance of the establishment of a greenbelt.
11 Preservation of community character shall also include the protection
12 and improvement of the quality of all water resources.

13 5. The governing body of any city or town which has established a
14 community preservation fund shall create an advisory board to review and
15 make recommendations on proposed acquisitions of interests in real prop-
16 erty or water quality improvement projects using monies from the fund.
17 Such board shall consist of five or seven legal residents of the munic-
18 ipality who shall serve without compensation. No member of the local
19 legislative body shall serve on the board. A majority of the members of
20 the board shall have demonstrated experience with conservation and land
21 preservation activities or water quality improvement activities. The
22 board shall act in an advisory capacity to the governing body.

23 6. The governing body of any city or town which has established a
24 community preservation fund shall, by local law, adopt a community pres-
25 ervation project plan. This plan shall list every project which the city
26 or town plans to undertake pursuant to the community preservation fund.
27 It shall include every parcel which is necessary to be acquired in the
28 city or town in order to protect community character. Such plan shall
29 provide for a detailed evaluation of all available land use alternatives
30 to protect community character, including but not limited to: (a) fee
31 simple acquisition, (b) zoning regulations, including density
32 reductions, cluster development, and site plan and design requirements,
33 (c) transfer of development rights, (d) the purchase of development
34 rights, and (e) scenic and conservation easements. Said evaluation shall
35 be as specific as practicable as to each parcel selected for inclusion
36 in the plan. The plan shall establish the priorities for preservation.
37 Said plan shall also list every water quality improvement project which
38 the city or town plans to undertake pursuant to the community preserva-
39 tion fund and shall state how such project would improve existing water
40 quality. Projects which have as their purpose the accommodation of new
41 growth as opposed to the remediation of water quality shall not qualify
42 for funding under this section. Funds from the community preservation
43 fund may only be expended for projects which have been included in said
44 plan. The plan shall be updated not less than once every five years and
45 shall be completed at least sixty (60) days before the submission of the
46 mandatory referendum required by section fifteen hundred seventy-six of
47 the tax law. As part of, or in addition, to said community preservation
48 fund project plan, each governing body may also adopt a management and
49 stewardship plan for interests or rights in real property acquired
50 pursuant to this section. No monies from the fund shall be expended for
51 management and stewardship, except as approved in said plan. Said plan
52 may provide management and stewardship projects for up to a three year
53 period and shall provide a description and estimated cost for each
54 project. Said plan shall be approved and adopted by local law and may be
55 updated from time to time at the discretion of the local governing body.

1 Only management and stewardship projects permitted pursuant to subdivi-
2 sion nine of this section shall be eligible to be included in the plan.

3 7. The governing body of any city or town which has established a
4 community preservation fund pursuant to this section shall consider
5 establishing a transfer of development rights program to protect commu-
6 nity character consistent with state law. If at any time during the life
7 of the community preservation fund a transfer of development rights
8 program is established, the city or town may utilize monies from the
9 community preservation fund in order to create and fund a central bank
10 of the transfer of development rights program. If at any time during the
11 life of the community preservation fund, a transfer of development
12 rights program is repealed by the city or town, all monies from the
13 central bank shall be returned to the community preservation fund.

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

23 9. Lands acquired pursuant to this section shall be administered and
24 managed in a manner which (a) allows public use and enjoyment in a
25 manner compatible with the natural, scenic, historic and open space
26 character of such lands; (b) preserves the native biological diversity
27 of such lands; (c) with regard to open spaces, limits improvements to
28 enhancing access for passive use of such lands such as nature trails,
29 boardwalks, bicycle paths, and peripheral parking areas provided that
30 such improvements do not degrade the ecological value of the land or
31 threaten essential wildlife habitat; and (d) preserves cultural property
32 consistent with accepted standards for historic preservation. In
33 furthering the purposes of this section, the city or town may enter into
34 agreements with conservation organizations formed under the not-for-pro-
35 fit corporation law and engaged in land trust activities to manage
36 lands, including less than fee interests acquired pursuant to the
37 provisions of this section, provided that any such agreement shall
38 contain a provision that such corporation shall keep the lands accessi-
39 ble to the public unless the governing body finds that public accessi-
40 bility would be detrimental to the lands or any natural resources asso-
41 ciated therewith. Except for interests or rights in real property
42 acquired for historic preservation purposes, management and stewardship
43 projects shall be only expended for (1) projects which promote the
44 protection or enhancement of the natural, scenic, and open space charac-
45 ter for which the interests or rights in real property were acquired, or
46 (2) accessory uses related to the purpose for which the interests or
47 rights in real property were acquired consistent with this subdivision,
48 or (3) restoration of acquired real property to its natural state
49 including the demolition of existing buildings and structures. In the
50 case of interests or rights in real property acquired for historic pres-
51 ervation purposes, funds may be expended only for the restoration and
52 rehabilitation of buildings and structures consistent with accepted
53 state and federal standards for historic preservation. Expenses related
54 to the customary operation and maintenance of acquired interests or
55 rights in real property shall not be permitted from the fund. Any

1 expenditure from the fund for a purpose other than that permitted, here-
2 in, shall be deemed to be prohibited.

3 10. Rights or interests in real property acquired with monies from
4 such fund shall not be sold, leased, exchanged, donated, or otherwise
5 disposed of or used for other than the purposes permitted by this
6 section without the express authority of an act of the legislature,
7 which shall provide for the substitution of other lands of equal envi-
8 ronmental value and fair market value and reasonably equivalent useful-
9 ness and location to those to be discontinued, sold or disposed of, and
10 such other requirements as shall be approved by the legislature. Nothing
11 in this section shall preclude a city or town, by local law, from estab-
12 lishing additional restrictions to the alienation of lands acquired
13 pursuant to this section. This subdivision shall not apply to the sale
14 of development rights by a city or town acquired pursuant to this
15 section, where said sale is made by a central bank created by a city or
16 town, pursuant to a transfer of development rights program established
17 by a city or town, provided, however (a) that the lands from which said
18 development rights were acquired shall remain preserved in perpetuity by
19 a permanent conservation easement or other instrument that similarly
20 preserves the community character referenced in subdivision four of this
21 section, and (b) the proceeds from such sale shall be deposited in the
22 community preservation fund.

23 11. Notwithstanding any provision of law to the contrary, cities or
24 towns may enter into inter-municipal agreements pursuant to article
25 five-G of this chapter for the following purposes: (a) to jointly
26 acquire interests or rights in real property, consistent with the
27 purposes of this section, where the acquisition of such interests or
28 rights promotes a regional public benefit for two or more cities or
29 towns pursuant to a regional plan, (b) to establish an office or depart-
30 ment to render legal opinions and interpretations to facilitate the
31 efficient and consistent administration of each fund created under this
32 section, (c) to provide for an independent financial audit of each
33 city's or town's fund, and (d) to hire employees necessary to implement
34 the provisions of this section.

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

55 13. The cost of employees and independent contractors to implement the
56 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

1 government from the sale or rental of community housing produced from
2 revenues of the fund; (e) the repayment of any loans issued from
3 proceeds of the fund; (f) any gifts of interests in land or funds; and
4 (g) any state or federal grants received by the city or town for provid-
5 ing affordable homes.

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

9 (a) the provision of financial assistance to first-time homebuyers who
10 are residents of the city or town for the purchase of a first home. Such
11 financial assistance may be in the form of a grant or a loan and such
12 program shall meet the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 7. Adoption of housing plan. (a) Before a city or town may expend any
36 funds pursuant to this section, the governing body shall first adopt a
37 housing plan which establishes an implementation plan for the provision
38 of community housing opportunities by the fund. Said plan shall be
39 adopted by local law. Such plan shall adhere to the following princi-
40 ples:

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

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

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

51 (4) Coordination. To promote coordination of state and local govern-
52 ment decisions and cooperation among communities to work toward the most
53 efficient, planned and cost-effective delivery of government services
54 by, among other means, facilitating cooperative agreements among adja-
55 cent communities, and to coordinate planning to ensure compatibility of
56 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.

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

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

11 (e) In the case of (1) the original conveyance of shares of stock in a
12 cooperative housing corporation in connection with the grant or transfer
13 of a proprietary leasehold by the cooperative corporation or cooperative
14 plan sponsor, and (2) the subsequent conveyance by the owner thereof of
15 such stock in a cooperative housing corporation in connection with the
16 grant or transfer of a proprietary leasehold for a cooperative unit
17 other than an individual residential unit, consideration shall include a
18 proportionate share of the unpaid principal of any mortgage on the real
19 property of the cooperative housing corporation comprising the cooper-
20 ative dwelling or dwellings. Such share shall be determined by multiply-
21 ing the total unpaid principal of the mortgage by a fraction, the numer-
22 ator of which shall be the number of shares of stock being conveyed in
23 the cooperative housing corporation in connection with the grant or
24 transfer of a proprietary leasehold and the denominator of which shall
25 be the total number of shares of stock in the cooperative housing corpo-
26 ration.

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

46 6. "Interest in the real property" includes title in fee, a leasehold
47 interest, a beneficial interest, an encumbrance, development rights, air
48 space and air rights, or any other interest with the right to use or
49 occupancy of real property or the right to receive rents, profits or
50 other income derived from real property. It shall also include an option
51 or contract to purchase real property. It shall not include a right of
52 first refusal to purchase real property.

53 7. "Grantor" means the person making the conveyance of real property
54 or interest therein. Where the conveyance consists of a transfer or an
55 acquisition of a controlling interest in an entity with an interest in
56 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

1 as determined by the treasurer. Any tax imposed pursuant to this subdi-
2 vision shall be administered and collected in a like manner as the tax
3 imposed by subdivision one of this section.

4 § 1577. Payment of tax. 1. The real estate transfer tax imposed pursu-
5 ant to this article shall be paid to the treasurer or the recording
6 officer acting as the agent of the treasurer upon designation as such
7 agent by the treasurer. Such tax shall be paid at the same time as the
8 real estate transfer tax imposed by article thirty-one of this chapter
9 is required to be paid. Such treasurer or recording officer shall
10 endorse upon each deed or instrument effecting a conveyance a receipt
11 for the amount of the tax so paid.

12 2. A return shall be required to be filed with such treasurer or
13 recording officer for purposes of the real estate transfer tax imposed
14 pursuant to this article at the same time as a return is required to be
15 filed for purposes of the real estate transfer tax imposed by article
16 thirty-one of this chapter. The treasurer shall prescribe the form of
17 return, the information which it shall contain, and the documentation
18 that shall accompany the return. Said form shall be identical to the
19 real estate transfer tax return required to be filed pursuant to section
20 fourteen hundred nine of this chapter, except that the treasurer shall
21 adapt said form to reflect the provisions in this chapter that are
22 inconsistent, different, or in addition to the provisions of article
23 thirty-one of this chapter. The real estate transfer tax returns
24 required to be filed pursuant to this section shall be preserved for
25 three years and thereafter until such treasurer or recording officer
26 orders them to be destroyed.

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

31 § 1578. Liability for tax. 1. The real estate transfer tax shall be
32 paid by the grantee. If the grantee has failed to pay the tax imposed
33 pursuant to this article or if the grantee is exempt from such tax, the
34 grantor shall have the duty to pay the tax. Where the grantor has the
35 duty to pay the tax because the grantee has failed to pay the tax, such
36 tax shall be the joint and several liability of the grantee and the
37 grantor.

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

46 § 1579. Exemptions. 1. The following shall be exempt from the payment
47 of the real estate transfer tax: (a) the state of New York, or any of
48 its agencies, instrumentalities, political subdivisions, or public
49 corporations (including a public corporation created pursuant to an
50 agreement or compact with another state or Dominion of Canada); and
51 (b) the United Nations, the United States of America or any of its
52 agencies or instrumentalities.

53 2. The tax shall not apply to any of the following conveyances: (a)
54 conveyances to the United Nations, the United States of America, the
55 state of New York, or any of their instrumentalities, agencies or poli-
56 tical subdivisions (or any public corporation, including a public corpo-

1 ration created pursuant to agreement or compact with another state or
2 the Dominion of Canada); (b) conveyances which are or were used to
3 secure a debt or other obligation; (c) conveyances which, without addi-
4 tional consideration, confirm, correct, modify or supplement a deed
5 previously recorded; (d) conveyances of real property without consider-
6 ation and otherwise than in connection with a sale, including deeds
7 conveying realty as bona fide gifts; (e) conveyances given in connection
8 with a tax sale; (f) conveyances to effectuate a mere change of identity
9 or form of ownership or organization where there is no change in benefi-
10 cial ownership, other than conveyances to a cooperative housing corpo-
11 ration of the real property comprising the cooperative dwelling or
12 dwellings; (g) conveyances which consist of a deed of partition; (h)
13 conveyances given pursuant to the federal bankruptcy act; (i) conveyanc-
14 es of real property which consist of the execution of a contract to sell
15 real property without the use or occupancy of such property or the
16 granting of an option to purchase real property without the use or occu-
17 pancy of such property; (j) conveyances of real property, where the
18 entire parcel of real property to be conveyed is the subject of one or
19 more of the following development restrictions: (1) agricultural,
20 conservation, scenic, or an open space easement, (2) covenants or
21 restrictions prohibiting development, (3) a purchase of development
22 rights agreement, (4) a transfer of development rights agreement, where
23 the property being conveyed has had its development rights removed, (5)
24 said real property is subject to the development restriction of an agri-
25 cultural district or individual commitment, pursuant to article twenty-
26 five-AA of the agriculture and markets law, (6) real property subject to
27 any locally adopted land preservation agreement, provided said exemption
28 is included in the local law imposing the tax authorized by this arti-
29 cle; (k) conveyances of real property, where the property is viable
30 agricultural land as defined in subdivision seven of section three
31 hundred one of the agriculture and markets law and the entire property
32 to be conveyed is to be made subject to one of the development
33 restrictions provided for in subparagraph two of paragraph (j) of this
34 subdivision provided that said development restriction precludes the
35 conversion of the property to a non-agricultural use for at least three
36 years from the date of transfer, and said development restriction is
37 evidenced by an easement, agreement, or other suitable instrument which
38 is to be conveyed to the city or town simultaneously with the conveyance
39 of the real property; or (l) conveyances of real property for open
40 space, parks, community housing, or historic preservation purposes to
41 any not-for-profit tax exempt corporation operated for conservation,
42 environmental, community housing or historic preservation purposes.

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

52 § 1580. Credit. A grantee shall be allowed a credit against the tax
53 due on a conveyance of real property to the extent tax was paid by such
54 grantee on a prior creation of a leasehold of all or a portion of the
55 same real property or on the granting of an option or contract to
56 purchase all or a portion of the same real property by such grantee.

1 Such credit shall be computed by multiplying the tax paid on the
2 creation of the leasehold or on the granting of the option or contract
3 by a fraction, the numerator of which is the value of the consideration
4 used to compute such tax paid which is not yet due to such grantor on
5 the date of the subsequent conveyance (and which such grantor will not
6 be entitled to receive after such date), and the denominator of which is
7 the total value of the consideration used to compute such tax paid.

8 § 1581. Cooperative housing corporation transfers. 1. Notwithstanding
9 the definition of "controlling interest" contained in subdivision two of
10 section fifteen hundred seventy-five of this article or anything to the
11 contrary contained in subdivision five of section fifteen hundred seven-
12 ty-five of this article, the tax imposed pursuant to this article shall
13 apply to (a) the original conveyance of shares of stock in a cooperative
14 housing corporation in connection with the grant or transfer of a
15 proprietary leasehold by the cooperative corporation or cooperative plan
16 sponsor, and (b) the subsequent conveyance of such stock in a cooper-
17 ative housing corporation in connection with the grant or transfer of a
18 proprietary leasehold by the owner thereof. With respect to any such
19 subsequent conveyance where the property is an individual residential
20 unit, the consideration for the interest conveyed shall exclude the
21 value of any liens on certificates of stock or other evidences of an
22 ownership interest in and a proprietary lease from a corporation or
23 partnership formed for the purpose of cooperative ownership of residen-
24 tial interest in real estate remaining thereon at the time of convey-
25 ance. In determining the tax on a conveyance described in paragraph (a)
26 of this subdivision, a credit shall be allowed for a proportionate part
27 of the amount of any tax paid upon the conveyance to the cooperative
28 housing corporation of the real property comprising the cooperative
29 dwelling or dwellings to the extent that such conveyance effectuated a
30 mere change of identity or form of ownership of such property and not a
31 change in the beneficial ownership of such property. The amount of the
32 credit shall be determined by multiplying the amount of tax paid upon
33 the conveyance to the cooperative housing corporation by a percentage
34 representing the extent to which such conveyance effectuated a mere
35 change of identity or form of ownership and not a change in the benefi-
36 cial ownership of such property, and then multiplying the resulting
37 product by a fraction, the numerator of which shall be the number of
38 shares of stock conveyed in a transaction described in paragraph (a) of
39 this subdivision, and the denominator of which shall be the total number
40 of shares of stock of the cooperative housing corporation (including any
41 stock held by the corporation). In no event, however, shall such credit
42 reduce the tax, on a conveyance described in paragraph (a) of this
43 subdivision, below zero, nor shall any such credit be allowed for a tax
44 paid more than twenty-four months prior to the date on which occurs the
45 first in a series of conveyances of shares of stock in an offering of
46 cooperative housing corporation shares described in paragraph (a) of
47 this subdivision.

48 2. Every cooperative housing corporation shall be required to file an
49 information return with the treasurer by July fifteenth of each year
50 covering the preceding period of January first through June thirtieth
51 and by January fifteenth of each year covering the preceding period of
52 July first through December thirty-first. The return shall contain such
53 information regarding the conveyance of shares of stock in the cooper-
54 ative housing corporation as the treasurer may deem necessary, includ-
55 ing, but not limited to, the names, addresses and employee identifica-
56 tion numbers or social security numbers of the grantor and the grantee,

1 the number of shares conveyed, the date of the conveyance and the
2 consideration paid for such conveyance.

3 § 1582. Designation of agents. The treasurer is authorized to desig-
4 nate the recording officer to act as his or her agent for purposes of
5 collecting the tax authorized by this article. The treasurer shall
6 provide for the manner in which such person may be designated as his or
7 her agent subject to such terms and conditions as the treasurer shall
8 prescribe. The real estate transfer tax shall be paid to such agent as
9 provided in section fifteen hundred seventy-seven of this article.

10 § 1583. Liability of recording officer. A recording officer shall not
11 be liable for any inaccuracy in the amount of tax imposed pursuant to
12 this article that he or she shall collect so long as he or she shall
13 compute and collect such tax on the amount of consideration or the value
14 of the interest conveyed as such amounts are provided to him or her by
15 the person paying the tax.

16 § 1584. Deposit and disposition of revenue. 1. All taxes, penalties
17 and interest imposed by the city or town under the authority of section
18 fifteen hundred seventy-six of this article, which are collected by the
19 treasurer or his or her agents, shall be deposited in trust funds as
20 provided by this section for the city or town and shall be kept in trust
21 and separate and apart from all other monies in possession of the treas-
22 urer. The treasurer or his or her agents shall provide for separate
23 trust funds for community preservation and community housing revenues.
24 Moneys in such fund shall be deposited and secured in the manner
25 provided by section ten of the general municipal law. Pending expendi-
26 ture from such fund, moneys therein may be invested in the manner
27 provided in section eleven of the general municipal law. Any interest
28 earned or capital gain realized on the moneys so deposited or invested
29 shall accrue to and become part of such fund.

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

36 3. The treasurer, after reserving such refunds, shall on or before the
37 twelfth day of each month pay to the city comptroller or the town super-
38 visor the taxes, penalties and interest imposed by the town under the
39 authority of section fifteen hundred seventy-six of this article,
40 collected by the treasurer, pursuant to this article during the next
41 preceding calendar month. The amount so payable shall be certified to
42 the city comptroller or the town supervisor by the treasurer, who shall
43 not be held liable for any inaccuracy in such certification. Provided,
44 however, any such certification may be based on such information as may
45 be available to the treasurer at the time such certification must be
46 made under this section. Where the amount so paid over to the city or
47 town in any such distribution is more or less than the amount due to the
48 city or town, the amount of the overpayment or underpayment shall be
49 certified to the city comptroller or the town supervisor by the treasur-
50 er, who shall not be held liable for any inaccuracy in such certif-
51 ication. The amount of the overpayment or underpayment shall be so
52 certified to the city comptroller or the town supervisor as soon after
53 the discovery of the overpayment or underpayment as reasonably possible
54 and subsequent payments and distributions by the treasurer to such city
55 or town shall be adjusted by subtracting the amount of any such overpay-
56 ment from or by adding the amount of any such underpayment to such

1 number of subsequent payments and distributions as the treasurer and
2 city comptroller or town supervisor shall consider reasonable in view of
3 the overpayment or underpayment and all other facts and circumstances.

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

7 § 1585. Judicial review. 1. Any final determination of the amount of
8 any tax payable under section fifteen hundred seventy-eight of this
9 article shall be reviewable for error, illegality or unconstitutionality
10 or any other reason whatsoever by a proceeding under article seventy-
11 eight of the civil practice law and rules if application therefor is
12 made to the supreme court within four months after the giving of the
13 notice of such final determination, provided, however, that any such
14 proceeding under article seventy-eight of the civil practice law and
15 rules shall not be instituted unless (a) the amount of any tax sought to
16 be reviewed, with such interest and penalties thereon as may be provided
17 for by local law shall be first deposited and there is filed an under-
18 taking, issued by a surety company authorized to transact business in
19 this state and approved by the state superintendent of insurance as to
20 solvency and responsibility, in such amount as a justice of the supreme
21 court shall approve to the effect that if such proceeding be dismissed
22 or the tax confirmed the petitioner will pay all costs and charges which
23 may accrue in the prosecution of such proceeding or (b) at the option of
24 the petitioner, such undertaking may be in a sum sufficient to cover the
25 taxes, interest and penalties stated in such determination, plus the
26 costs and charges which may accrue against it in the prosecution of the
27 proceeding, in which event the petitioner shall not be required to pay
28 such taxes, interest or penalties as a condition precedent to the appli-
29 cation.

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

44 § 1586. Apportionment. A local law adopted by any city or town, pursu-
45 ant to this article, shall provide for a method of apportionment for
46 determining the amount of tax due whenever the real property or interest
47 therein is situated within and without the city or town.

48 § 1587. Miscellaneous. A local law adopted by any city or town, pursu-
49 ant to this article, may contain such other provisions as the city or
50 town deems necessary for the proper administration of the tax imposed
51 pursuant to this article, including provisions concerning the determi-
52 nation of tax, the imposition of interest on underpayments and overpay-
53 ments and the imposition of civil penalties. Such provisions shall be
54 identical to the corresponding provisions of the real estate transfer
55 tax imposed by article thirty-one of this chapter, so far as such

1 provisions can be made applicable to the tax imposed pursuant to this
2 article.

3 § 1588. Returns to be secret. 1. Except in accordance with proper
4 judicial order or as otherwise provided by law, it shall be unlawful for
5 the treasurer or any officer or employee of the county, city or town,
6 including any person engaged or retained on an independent contract
7 basis, to divulge or make known in any manner the particulars set forth
8 or disclosed in any return required under a local law enacted pursuant
9 to this article. Provided, however, that nothing in this section shall
10 prohibit the recording officer from making a notation on an instrument
11 affecting a conveyance indicating the amount of tax paid. No recorded
12 instrument affecting a conveyance shall be considered a return for
13 purposes of this section.

14 2. The officers charged with the custody of such returns shall not be
15 required to produce any of them or evidence of anything contained in
16 them in any action or proceeding in any court, except on behalf of the
17 county, city, or town in any action or proceeding involving the
18 collection of a tax due under a local law enacted pursuant to this arti-
19 cle to which such county, city, or town is a party, or a claimant, or on
20 behalf of any party to any action or proceeding under the provisions of
21 a local law enacted pursuant to this article when the returns or facts
22 shown thereby are directly involved in such action or proceeding, in any
23 of which events the court may require the production of, and may admit
24 in evidence, so much of said returns or of the facts shown thereby, as
25 are pertinent to the action or proceeding and no more.

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

35 § 4. Severability. If any provision of this act or the application
36 thereof shall for any reason be adjudged by any court of competent
37 jurisdiction to be invalid, such judgment shall not affect, impair, or
38 invalidate the remainder of this act, but shall be confined in its oper-
39 ation to the provision thereof directly involved in the controversy in
40 which such judgment shall have been rendered.

41 § 5. This act shall take effect immediately.