

STATE OF NEW YORK

4098--A

2023-2024 Regular Sessions

IN SENATE

February 3, 2023

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

AN ACT to amend the 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 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

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

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1 to title two or title three of article fifty-six of the environmental
2 conservation law.

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

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

45 4. Preservation of community character shall involve one or more of
46 the following: (a) establishment of parks, nature preserves, or recre-
47 ation areas; (b) preservation of open space, including agricultural
48 lands provided, however, that farm buildings and structures used for the
49 production and marketing of farm products produced on such agricultural
50 lands shall be permitted; (c) preservation of lands of exceptional
51 scenic value; (d) preservation of fresh and saltwater marshes or other
52 wetlands; (e) preservation of aquifer recharge areas; (f) preservation
53 of undeveloped beach lands or shoreline including those at significant
54 risk of coastal flooding due to projected sea level rise and future
55 storms; (g) establishment of wildlife refuges for the purpose of main-
56 taining native animal species diversity, including the protection of

1 habitat essential to the recovery of rare, threatened or endangered
2 species; (h) preservation of pine barrens consisting of such biota as
3 pitch pine, and scrub oak; (i) preservation of unique or threatened
4 ecological areas; (j) preservation of rivers and river areas in a
5 natural, free-flowing condition; (k) preservation of forested land; (l)
6 preservation of public access to lands for public use including stream
7 rights and waterways; (m) preservation of historic places and properties
8 listed on the New York state register of historic places and/or
9 protected under a municipal historic preservation ordinance or law; (n)
10 preservation of lands necessary to protect fisheries and water dependent
11 uses essential to maintain and enhance maritime heritage; and (o) under-
12 taking any of the aforementioned in furtherance of the establishment of
13 a greenbelt. Preservation of community character shall also include the
14 protection and improvement of the quality of all water resources.

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

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

1 updated from time to time at the discretion of the local governing body.
2 Only management and stewardship projects permitted pursuant to subdivi-
3 sion nine of this section shall be eligible to be included in the plan.

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

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

24 9. Lands acquired pursuant to this section shall be administered and
25 managed in a manner which (a) allows public use and enjoyment in a
26 manner compatible with the natural, scenic, historic and open space
27 character of such lands; (b) preserves the native biological diversity
28 of such lands; (c) with regard to open spaces, limits improvements to
29 enhancing access for passive use of such lands such as nature trails,
30 boardwalks, bicycle paths, and peripheral parking areas provided that
31 such improvements do not degrade the ecological value of the land or
32 threaten essential wildlife habitat; and (d) preserves cultural property
33 consistent with accepted standards for historic preservation. In
34 furthering the purposes of this section, the city or town may enter into
35 agreements with conservation organizations formed under the not-for-pro-
36 fit corporation law and engaged in land trust activities to manage
37 lands, including less than fee interests acquired pursuant to the
38 provisions of this section, provided that any such agreement shall
39 contain a provision that such corporation shall keep the lands accessi-
40 ble to the public unless the governing body finds that public accessi-
41 bility would be detrimental to the lands or any natural resources asso-
42 ciated therewith. Except for interests or rights in real property
43 acquired for historic preservation purposes, management and stewardship
44 projects shall be only expended for (1) projects which promote the
45 protection or enhancement of the natural, scenic, and open space charac-
46 ter for which the interests or rights in real property were acquired, or
47 (2) accessory uses related to the purpose for which the interests or
48 rights in real property were acquired consistent with this subdivision,
49 or (3) restoration of acquired real property to its natural state
50 including the demolition of existing buildings and structures. In the
51 case of interests or rights in real property acquired for historic pres-
52 ervation purposes, funds may be expended only for the restoration and
53 rehabilitation of buildings and structures consistent with accepted
54 state and federal standards for historic preservation. Expenses related
55 to the customary operation and maintenance of acquired interests or
56 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

1 duties and responsibilities of said employees and independent contrac-
2 tors are directly dedicated to implementing the provisions of this
3 section. Where such employees and independent contractors are not exclu-
4 sively dedicated to implementing the provisions of this section, no more
5 than the cost of the actual time expended directly dedicated to imple-
6 menting the provisions of this section may be charged. Such costs shall
7 be expressly identified in the city or town budget and any plan adopted
8 pursuant to this section before funds for such costs may be expended. In
9 addition, such costs must be documented by a time accounting system,
10 subject to audit. Costs relating to the activities of elected officials
11 implementing the purposes of this section may not be a charge to the
12 fund.

13 § 2. The tax law is amended by adding a new article 33-C to read as
14 follows:

15 ARTICLE 33-C

16 TAX ON REAL ESTATE TRANSFERS IN CITIES OR TOWNS

17 Section 1575. Definitions.

18 1576. Imposition of tax.

19 1577. Payment of tax.

20 1578. Liability for tax.

21 1579. Exemptions.

22 1580. Credit.

23 1581. Cooperative housing corporation transfers.

24 1582. Designation of agents.

25 1583. Liability of recording officer.

26 1584. Deposit and disposition of revenue.

27 1585. Judicial review.

28 1586. Apportionment.

29 1587. Miscellaneous.

30 1588. Returns to be secret.

31 § 1575. Definitions. When used in this article, unless otherwise
32 expressly stated, the following words and terms shall have the following
33 meanings:

34 1. "Person" means an individual, partnership, limited liability compa-
35 ny, society, association, joint stock company, corporation, estate,
36 receiver, trustee, assignee, referee or any other person acting in a
37 fiduciary or representative capacity, whether appointed by a court or
38 otherwise, any combination of individuals, and any other form of unin-
39 corporated enterprise owned or conducted by two or more persons.

40 2. "Controlling interest" means (a) in the case of a corporation,
41 either fifty percent or more of the total combined voting power of all
42 classes of stock of such corporation, or fifty percent or more of the
43 capital, profits or beneficial interest in such voting stock of such
44 corporation, and (b) in the case of a partnership, association, trust or
45 other entity, fifty percent or more of the capital, profits or benefi-
46 cial interest in such partnership, association, trust or other entity.

47 3. "Real property" means every estate or right, legal or equitable,
48 present or future, vested or contingent, in lands, tenements or heredi-
49 taments, including buildings, structures and other improvements thereon,
50 which are located in whole or in part within any city or town. It shall
51 not include rights to sepulture.

52 4. "Consideration" means the price actually paid or required to be
53 paid for the real property or interest therein, including payment for an
54 option or contract to purchase real property, whether or not expressed
55 in the deed and whether paid or required to be paid by money, property,
56 or any other thing of value. It shall include the cancellation or

1 discharge of an indebtedness or obligation. It shall also include the
2 amount of any mortgage, purchase money mortgage, lien or other encum-
3 brance, whether or not the underlying indebtedness is assumed or taken
4 subject to.

5 (a) In the case of a creation of a leasehold interest or the granting
6 of an option with use and occupancy of real property, consideration
7 shall include, but not be limited to, the value of the rental and other
8 payments attributable to the use and occupancy of the real property or
9 interest therein, the value of any amount paid for an option to purchase
10 or renew and the value of rental or other payments attributable to the
11 exercise of any option to renew.

12 (b) In the case of a creation of a subleasehold interest, consider-
13 ation shall include, but not be limited to, the value of the sublease
14 rental payments attributable to the use and occupancy of the real prop-
15 erty, the value of any amount paid for an option to renew and the value
16 of rental or other payments attributable to the exercise of any option
17 to renew less the value of the remaining prime lease rental payments
18 required to be made.

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

23 (d) In the case of an assignment or surrender of a leasehold interest
24 or the assignment or surrender of an option or contract to purchase real
25 property, consideration shall not include the value of the remaining
26 rental payments required to be made pursuant to the terms of such lease
27 or the amount to be paid for the real property pursuant to the terms of
28 the option or contract being assigned or surrendered.

29 (e) In the case of (1) the original conveyance of shares of stock in a
30 cooperative housing corporation in connection with the grant or transfer
31 of a proprietary leasehold by the cooperative corporation or cooperative
32 plan sponsor, and (2) the subsequent conveyance by the owner thereof of
33 such stock in a cooperative housing corporation in connection with the
34 grant or transfer of a proprietary leasehold for a cooperative unit
35 other than an individual residential unit, consideration shall include a
36 proportionate share of the unpaid principal of any mortgage on the real
37 property of the cooperative housing corporation comprising the cooper-
38 ative dwelling or dwellings. Such share shall be determined by multiply-
39 ing the total unpaid principal of the mortgage by a fraction, the numer-
40 ator of which shall be the number of shares of stock being conveyed in
41 the cooperative housing corporation in connection with the grant or
42 transfer of a proprietary leasehold and the denominator of which shall
43 be the total number of shares of stock in the cooperative housing corpo-
44 ration.

45 5. "Conveyance" means the transfer or transfers of any interest in
46 real property by any method, including but not limited to, sale,
47 exchange, assignment, surrender, mortgage foreclosure, transfer in lieu
48 of foreclosure, option, trust indenture, taking by eminent domain,
49 conveyance upon liquidation or by a receiver, or transfer or acquisition
50 of a controlling interest in any entity with an interest in real proper-
51 ty. Transfer of an interest in real property shall include the creation
52 of a leasehold or sublease only where (a) the sum of the term of the
53 lease or sublease and any options for renewal exceeds forty-nine years,
54 (b) substantial capital improvements are or may be made by or for the
55 benefit of the lessee or sublessee, and (c) the lease or sublease is for
56 substantially all of the premises constituting the real property.

1 Notwithstanding the foregoing, conveyance of real property shall not
2 include a conveyance made pursuant to devise, bequest or inheritance;
3 the creation, modification, extension, spreading, severance, consol-
4 idation, assignment, transfer, release or satisfaction of a mortgage; a
5 mortgage subordination agreement, a mortgage severance agreement, an
6 instrument given to perfect or correct a recorded mortgage; or a release
7 of lien of tax pursuant to this chapter or the internal revenue code.

8 6. "Interest in the real property" includes title in fee, a leasehold
9 interest, a beneficial interest, an encumbrance, development rights, air
10 space and air rights, or any other interest with the right to use or
11 occupancy of real property or the right to receive rents, profits or
12 other income derived from real property. It shall also include an option
13 or contract to purchase real property. It shall not include a right of
14 first refusal to purchase real property.

15 7. "Grantor" means the person making the conveyance of real property
16 or interest therein. Where the conveyance consists of a transfer or an
17 acquisition of a controlling interest in an entity with an interest in
18 real property, "grantor" means the entity with an interest in real prop-
19 erty or a shareholder or partner transferring stock or partnership
20 interest, respectively.

21 8. "Grantee" means the person who obtains real property or interest
22 therein as a result of a conveyance.

23 9. "Fund" means a community preservation fund created pursuant to
24 section six-w of the general municipal law.

25 10. "Recording officer" means the county clerk.

26 11. "City or town" means a city or town, except a city of one million
27 or more.

28 12. "Treasurer" means the county treasurer.

29 § 1576. Imposition of tax. 1. Notwithstanding any other provisions of
30 law to the contrary, any city or town, acting through its local govern-
31 ing body, is hereby authorized and empowered to adopt a local law impos-
32 ing in such city or town a tax on each conveyance of real property or
33 interest therein where the consideration exceeds five hundred dollars,
34 at a rate of up to two percent of the consideration for such conveyance.
35 Provided, however, any such local law imposing, repealing or reimposing
36 such tax shall be subject to a mandatory referendum pursuant to section
37 twenty-three of the municipal home rule law. Such local law shall only
38 be submitted for the approval of the electors at a general election.
39 Notwithstanding the foregoing, prior to adoption of such local law, the
40 city or town must establish a community preservation fund pursuant to
41 section six-w of the general municipal law. Revenues from such tax shall
42 be deposited in such fund and may be used solely for the purposes of
43 such fund. Such local law shall apply to any conveyance occurring on or
44 after the first day of a month to be designated by such local governing
45 body, which is not less than sixty days after the enactment of such
46 local law, but shall not apply to conveyances made on or after such date
47 pursuant to binding written contracts entered into prior to such date,
48 provided that the date of execution of such contract is confirmed by
49 independent evidence such as the recording of the contract, payment of a
50 deposit or other facts and circumstances as determined by the treasurer.

51 2. Notwithstanding any other provisions of law to the contrary, in
52 addition to the tax authorized by subdivision one of this section, any
53 city or town, acting through its governing body, is hereby authorized
54 and empowered to adopt a local law imposing in such city or town a
55 supplemental tax on each conveyance of real property or interest therein
56 where the consideration exceeds five hundred dollars, at the rate of up

1 to one half of one percent of the consideration for such conveyance.
2 Provided, however, any such local law imposing, repealing or reimposing
3 such supplemental tax shall be subject to a mandatory referendum pursu-
4 ant to section twenty-three of the municipal home rule law. Revenues
5 from such supplemental tax shall be deposited in such community housing
6 fund and may be used solely for the purposes of such community housing
7 fund. Such local law shall apply to any conveyance occurring on or after
8 the first day of a month to be designated by the governing board, which
9 is not less than sixty days after the enactment of such local law, but
10 shall not apply to conveyances made on or after such date pursuant to
11 binding written contracts entered into prior to such date, provided that
12 the date of execution of such contract is confirmed by independent
13 evidence such as the recording of the contract, payment of a deposit or
14 other facts and circumstances as determined by the treasurer. Any tax
15 imposed pursuant to this subdivision shall be administered and collected
16 in a like manner as the tax imposed by subdivision one of this section.

17 § 1577. Payment of tax. 1. The real estate transfer tax imposed pursu-
18 ant to this article shall be paid to the treasurer or the recording
19 officer acting as the agent of the treasurer upon designation as such
20 agent by the treasurer. Such tax shall be paid at the same time as the
21 real estate transfer tax imposed by article thirty-one of this chapter
22 is required to be paid. Such treasurer or recording officer shall
23 endorse upon each deed or instrument effecting a conveyance a receipt
24 for the amount of the tax so paid.

25 2. A return shall be required to be filed with such treasurer or
26 recording officer for purposes of the real estate transfer tax imposed
27 pursuant to this article at the same time as a return is required to be
28 filed for purposes of the real estate transfer tax imposed by article
29 thirty-one of this chapter. The treasurer shall prescribe the form of
30 return, the information which it shall contain, and the documentation
31 that shall accompany the return. Said form shall be identical to the
32 real estate transfer tax return required to be filed pursuant to section
33 fourteen hundred nine of this chapter, except that the treasurer shall
34 adapt said form to reflect the provisions in this chapter that are
35 inconsistent, different, or in addition to the provisions of article
36 thirty-one of this chapter. The real estate transfer tax returns
37 required to be filed pursuant to this section shall be preserved for
38 three years and thereafter until such treasurer or recording officer
39 orders them to be destroyed.

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

44 § 1578. Liability for tax. 1. The real estate transfer tax shall be
45 paid by the grantee. If the grantee has failed to pay the tax imposed
46 pursuant to this article or if the grantee is exempt from such tax, the
47 grantor shall have the duty to pay the tax. Where the grantor has the
48 duty to pay the tax because the grantee has failed to pay the tax, such
49 tax shall be the joint and several liability of the grantee and the
50 grantor.

51 2. For the purpose of the proper administration of this article and to
52 prevent evasion of the tax hereby imposed, it shall be presumed that all
53 conveyances are taxable. Where the consideration includes property other
54 than money, it shall be presumed that the consideration is the fair
55 market value of the real property or interest therein. These presump-
56 tions shall prevail until the contrary is proven, and the burden of

1 proving the contrary shall be on the person liable for payment of the
2 tax.

3 § 1579. Exemptions. 1. The following shall be exempt from the payment
4 of the real estate transfer tax: (a) the state of New York, or any of
5 its agencies, instrumentalities, political subdivisions, or public
6 corporations (including a public corporation created pursuant to an
7 agreement or compact with another state or Dominion of Canada); and
8 (b) the United Nations, the United States of America or any of its
9 agencies or instrumentalities.

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

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

10 § 1580. Credit. A grantee shall be allowed a credit against the tax
11 due on a conveyance of real property to the extent tax was paid by such
12 grantee on a prior creation of a leasehold of all or a portion of the
13 same real property or on the granting of an option or contract to
14 purchase all or a portion of the same real property by such grantee.
15 Such credit shall be computed by multiplying the tax paid on the
16 creation of the leasehold or on the granting of the option or contract
17 by a fraction, the numerator of which is the value of the consideration
18 used to compute such tax paid which is not yet due to such grantor on
19 the date of the subsequent conveyance (and which such grantor will not
20 be entitled to receive after such date), and the denominator of which is
21 the total value of the consideration used to compute such tax paid.

22 § 1581. Cooperative housing corporation transfers. 1. Notwithstanding
23 the definition of "controlling interest" contained in subdivision two of
24 section fifteen hundred seventy-five of this article or anything to the
25 contrary contained in subdivision five of section fifteen hundred seven-
26 ty-five of this article, the tax imposed pursuant to this article shall
27 apply to (a) the original conveyance of shares of stock in a cooperative
28 housing corporation in connection with the grant or transfer of a
29 proprietary leasehold by the cooperative corporation or cooperative plan
30 sponsor, and (b) the subsequent conveyance of such stock in a cooper-
31 ative housing corporation in connection with the grant or transfer of a
32 proprietary leasehold by the owner thereof. With respect to any such
33 subsequent conveyance where the property is an individual residential
34 unit, the consideration for the interest conveyed shall exclude the
35 value of any liens on certificates of stock or other evidences of an
36 ownership interest in and a proprietary lease from a corporation or
37 partnership formed for the purpose of cooperative ownership of residen-
38 tial interest in real estate remaining thereon at the time of convey-
39 ance. In determining the tax on a conveyance described in paragraph (a)
40 of this subdivision, a credit shall be allowed for a proportionate part
41 of the amount of any tax paid upon the conveyance to the cooperative
42 housing corporation of the real property comprising the cooperative
43 dwelling or dwellings to the extent that such conveyance effectuated a
44 mere change of identity or form of ownership of such property and not a
45 change in the beneficial ownership of such property. The amount of the
46 credit shall be determined by multiplying the amount of tax paid upon
47 the conveyance to the cooperative housing corporation by a percentage
48 representing the extent to which such conveyance effectuated a mere
49 change of identity or form of ownership and not a change in the benefi-
50 cial ownership of such property, and then multiplying the resulting
51 product by a fraction, the numerator of which shall be the number of
52 shares of stock conveyed in a transaction described in paragraph (a) of
53 this subdivision, and the denominator of which shall be the total number
54 of shares of stock of the cooperative housing corporation (including any
55 stock held by the corporation). In no event, however, shall such credit
56 reduce the tax, on a conveyance described in paragraph (a) of this

1 subdivision, below zero, nor shall any such credit be allowed for a tax
2 paid more than twenty-four months prior to the date on which occurs the
3 first in a series of conveyances of shares of stock in an offering of
4 cooperative housing corporation shares described in paragraph (a) of
5 this subdivision.

6 2. Every cooperative housing corporation shall be required to file an
7 information return with the treasurer by July fifteenth of each year
8 covering the preceding period of January first through June thirtieth
9 and by January fifteenth of each year covering the preceding period of
10 July first through December thirty-first. The return shall contain such
11 information regarding the conveyance of shares of stock in the cooper-
12 ative housing corporation as the treasurer may deem necessary, includ-
13 ing, but not limited to, the names, addresses and employee identifica-
14 tion numbers or social security numbers of the grantor and the grantee,
15 the number of shares conveyed, the date of the conveyance and the
16 consideration paid for such conveyance.

17 § 1582. Designation of agents. The treasurer is authorized to desig-
18 nate the recording officer to act as his or her agent for purposes of
19 collecting the tax authorized by this article. The treasurer shall
20 provide for the manner in which such person may be designated as his or
21 her agent subject to such terms and conditions as the treasurer shall
22 prescribe. The real estate transfer tax shall be paid to such agent as
23 provided in section fifteen hundred seventy-seven of this article.

24 § 1583. Liability of recording officer. A recording officer shall not
25 be liable for any inaccuracy in the amount of tax imposed pursuant to
26 this article that he or she shall collect so long as he or she shall
27 compute and collect such tax on the amount of consideration or the value
28 of the interest conveyed as such amounts are provided to him or her by
29 the person paying the tax.

30 § 1584. Deposit and disposition of revenue. 1. All taxes, penalties
31 and interest imposed by the city or town under the authority of section
32 fifteen hundred seventy-six of this article, which are collected by the
33 treasurer or his or her agents, shall be deposited in trust funds as
34 provided by this section for the city or town and shall be kept in trust
35 and separate and apart from all other monies in possession of the treas-
36 urer. The treasurer or his or her agents shall provide for separate
37 trust funds for community preservation and community housing revenues.
38 Moneys in such fund shall be deposited and secured in the manner
39 provided by section ten of the general municipal law. Pending expendi-
40 ture from such fund, moneys therein may be invested in the manner
41 provided in section eleven of the general municipal law. Any interest
42 earned or capital gain realized on the moneys so deposited or invested
43 shall accrue to and become part of such fund.

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

50 3. The treasurer, after reserving such refunds, shall on or before the
51 twelfth day of each month pay to the city comptroller or the town super-
52 visor the taxes, penalties and interest imposed by the town under the
53 authority of section fifteen hundred seventy-six of this article,
54 collected by the treasurer, pursuant to this article during the next
55 preceding calendar month. The amount so payable shall be certified to
56 the city comptroller or the town supervisor by the treasurer, who shall

1 not be held liable for any inaccuracy in such certification. Provided,
2 however, any such certification may be based on such information as may
3 be available to the treasurer at the time such certification must be
4 made under this section. Where the amount so paid over to the city or
5 town in any such distribution is more or less than the amount due to the
6 city or town, the amount of the overpayment or underpayment shall be
7 certified to the city comptroller or the town supervisor by the treasur-
8 er, who shall not be held liable for any inaccuracy in such certifi-
9 cation. The amount of the overpayment or underpayment shall be so
10 certified to the city comptroller or the town supervisor as soon after
11 the discovery of the overpayment or underpayment as reasonably possible
12 and subsequent payments and distributions by the treasurer to such city
13 or town shall be adjusted by subtracting the amount of any such overpay-
14 ment from or by adding the amount of any such underpayment to such
15 number of subsequent payments and distributions as the treasurer and
16 city comptroller or town supervisor shall consider reasonable in view of
17 the overpayment or underpayment and all other facts and circumstances.

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

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

44 2. Where any tax imposed hereunder shall have been erroneously, ille-
45 gally or unconstitutionally assessed or collected and application for
46 the refund or revision thereof duly made to the proper fiscal officer or
47 officers, and such officer or officers shall have made a determination
48 denying such refund or revision, such determination shall be reviewable
49 by a proceeding under article seventy-eight of the civil practice law
50 and rules; provided, however, that (a) such proceeding is instituted
51 within four months after the giving of the notice of such denial, (b) a
52 final determination of tax due was not previously made, and (c) an
53 undertaking is filed with the proper fiscal officer or officers in such
54 amount and with such sureties as a justice of the supreme court shall
55 approve to the effect that if such proceeding be dismissed or the tax

1 confirmed, the petitioner will pay all costs and charges which may
2 accrue in the prosecution of such proceeding.

3 § 1586. Apportionment. A local law adopted by any city or town, pursu-
4 ant to this article, shall provide for a method of apportionment for
5 determining the amount of tax due whenever the real property or interest
6 therein is situated within and without the city or town.

7 § 1587. Miscellaneous. A local law adopted by any city or town, pursu-
8 ant to this article, may contain such other provisions as the city or
9 town deems necessary for the proper administration of the tax imposed
10 pursuant to this article, including provisions concerning the determi-
11 nation of tax, the imposition of interest on underpayments and overpay-
12 ments and the imposition of civil penalties. Such provisions shall be
13 identical to the corresponding provisions of the real estate transfer
14 tax imposed by article thirty-one of this chapter, so far as such
15 provisions can be made applicable to the tax imposed pursuant to this
16 article.

17 § 1588. Returns to be secret. 1. Except in accordance with proper
18 judicial order or as otherwise provided by law, it shall be unlawful for
19 the treasurer or any officer or employee of the county, city or town,
20 including any person engaged or retained on an independent contract
21 basis, to divulge or make known in any manner the particulars set forth
22 or disclosed in any return required under a local law enacted pursuant
23 to this article. Provided, however, that nothing in this section shall
24 prohibit the recording officer from making a notation on an instrument
25 affecting a conveyance indicating the amount of tax paid. No recorded
26 instrument affecting a conveyance shall be considered a return for
27 purposes of this section.

28 2. The officers charged with the custody of such returns shall not be
29 required to produce any of them or evidence of anything contained in
30 them in any action or proceeding in any court, except on behalf of the
31 county, city, or town in any action or proceeding involving the
32 collection of a tax due under a local law enacted pursuant to this arti-
33 cle to which such county, city, or town is a party, or a claimant, or on
34 behalf of any party to any action or proceeding under the provisions of
35 a local law enacted pursuant to this article when the returns or facts
36 shown thereby are directly involved in such action or proceeding, in any
37 of which events the court may require the production of, and may admit
38 in evidence, so much of said returns or of the facts shown thereby, as
39 are pertinent to the action or proceeding and no more.

40 3. Nothing in this section shall be construed to prohibit the delivery
41 to a grantor or grantee of an instrument effecting a conveyance or the
42 duly authorized representative of a grantor or grantee of a certified
43 copy of any return filed in connection with such instrument or to
44 prohibit the publication of statistics so classified as to prevent the
45 identification of particular returns and the items thereof, or the
46 inspection by the legal representatives of such county, city, or town of
47 the return of any taxpayer who shall bring action to set aside or review
48 the tax based thereon.

49 § 3. Severability. If any provision of this act or the application
50 thereof shall for any reason be adjudged by any court of competent
51 jurisdiction to be invalid, such judgment shall not affect, impair, or
52 invalidate the remainder of this act, but shall be confined in its oper-
53 ation to the provision thereof directly involved in the controversy in
54 which such judgment shall have been rendered.

55 § 4. This act shall take effect immediately.