

STATE OF NEW YORK

10276--A

IN SENATE

May 11, 2026

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

AN ACT to amend the town law, in relation to authorizing the town of Clarkstown to establish community preservation funds; to amend the tax law, in relation to authorizing the town of Clarkstown to impose a real estate transfer tax; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The town law is amended by adding a new section 64-m to
2 read as follows:

3 § 64-m. Town of Clarkstown preservation funds. 1. As used in this
4 section, the following words and terms shall have the following mean-
5 ings:

6 (a) "Town" means the town of Clarkstown.

7 (b) "Community preservation" shall mean and include any of the
8 purposes outlined in subdivision five of this section.

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

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

13 (e) "Tax" shall mean the real estate transfer tax imposed pursuant to
14 section fourteen hundred fifty-bb of the tax law or, if the context
15 clearly indicates, shall mean the real estate transfer tax imposed
16 pursuant to article thirty-one of the tax law.

17 2. The town board of the town of Clarkstown is authorized to establish
18 by local law a community preservation fund pursuant to the provisions of
19 this section. Deposits into the fund may include revenues of the local
20 government from whatever source and shall include, at a minimum, all
21 revenues from a tax imposed upon the transfer of real property interests
22 in such town pursuant to article thirty-one-K of the tax law. The fund
23 shall also be authorized to accept gifts of any such interests in land

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

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

9 3. The purposes of the fund shall be exclusively: (a) to implement a
10 plan for the preservation of community character as required by this
11 section, (b) to acquire interests or rights in real property for the
12 preservation of community character within the town including villages
13 therein in accordance with such plan and in cooperation with willing
14 sellers, (c) to establish a bank pursuant to a transfer of development
15 rights program consistent with section two hundred sixty-one-a of this
16 chapter, and (d) to provide a management and stewardship program for
17 such interests and rights consistent with subdivision ten of this
18 section and in accordance with such plan designed to preserve community
19 character. Not more than ten percent of the fund shall be utilized for
20 the management and stewardship program.

21 4. If the implementation of the community preservation project plan,
22 adopted by the town board, as provided in subdivision seven of this
23 section, has been completed, and funds are no longer needed for the
24 purposes outlined in this subdivision, then any remaining monies in the
25 fund shall be applied to reduce any bonded indebtedness or obligations
26 incurred to effectuate the purposes of this section.

27 5. Preservation of community character shall involve one or more of
28 the following:

- 29 (a) preservation of open space;
- 30 (b) establishment of parks, nature preserves, or recreation areas;
- 31 (c) preservation of land which is predominantly viable agricultural
32 land, as defined in subdivision seven of section three hundred one of
33 the agriculture and markets law, or unique and irreplaceable agricul-
34 tural land, as defined in subdivision six of section three hundred one
35 of the agriculture and markets law;
- 36 (d) preservation of lands of exceptional scenic value;
- 37 (e) preservation of freshwater marshes or other wetlands;
- 38 (f) preservation of aquifer recharge areas;
- 39 (g) preservation of undeveloped beach-lands or shoreline;
- 40 (h) establishment of wildlife refuges for the purpose of maintaining
41 native animal species diversity, including the protection of habitat
42 essential to the recovery of rare, threatened or endangered species;
- 43 (i) preservation of unique or threatened ecological areas;
- 44 (j) preservation of rivers and river areas in a natural, free-flowing
45 condition;
- 46 (k) preservation of forested land;
- 47 (l) preservation of public access to lands for public use including
48 stream rights and waterways;
- 49 (m) preservation of historic places and properties listed on the New
50 York state register of historic places and/or protected under a munici-
51 pal historic preservation ordinance or law; and
- 52 (n) undertaking any of the purposes of this subdivision in furtherance
53 of the establishment of a greenbelt.

54 6. The town board which has established a community preservation fund
55 shall create an advisory board to review and make recommendations on
56 proposed acquisitions of interests in real property using monies from

1 the fund. Such board shall consist of five or seven legal residents of
2 the municipality who shall serve without compensation. The names and
3 relevant qualifications of each member of the advisory board shall be
4 posted and updated as necessary on the town's official municipal website
5 maintained pursuant to article thirteen-E of the general municipal law.
6 No member of the local legislative body shall serve on the board. A
7 majority of the members of the board shall have demonstrated experience
8 with conservation or land preservation activities. The board shall act
9 in an advisory capacity to the town board. At least one member of the
10 board shall be an active farmer. Board members' terms shall be stag-
11 gered.

12 6-a. In the event of a vacancy on the advisory board established
13 pursuant to this section, the town shall cause a notice of such vacancy
14 to be posted in the official newspaper of such town, or if no newspaper
15 has been designated as the official newspaper, in a newspaper having
16 general circulation in such town. A copy of such notice shall also be
17 posted on the town's official municipal website maintained pursuant to
18 article thirteen-E of the general municipal law.

19 7. The town board which has established a community preservation fund
20 shall, by local law, adopt a community preservation project plan. Such
21 plan shall list every project which the town plans to undertake pursuant
22 to the community preservation fund. It shall include every parcel which
23 is necessary to be acquired in the town in order to protect community
24 character. Such plan shall provide for a detailed evaluation of all
25 available land use alternatives to protect community character, includ-
26 ing but not limited to: (a) fee simple acquisition, (b) zoning regu-
27 lations, including density reductions, cluster development, and site
28 plan and design requirements, (c) transfer of development rights, (d)
29 the purchase of development rights, and (e) scenic and conservation
30 easements. Said evaluation shall be as specific as practicable as to
31 each parcel selected for inclusion in such plan. Such plan shall estab-
32 lish the priorities for preservation, and shall include the preservation
33 of farmland as its highest priority. Funds from the community preserva-
34 tion fund may only be expended for projects which have been included in
35 such plan. Such plan shall be updated not less than once every five
36 years, but in no event until at least three years after the adoption of
37 the original plan. A copy of such plan shall be filed with the town
38 clerk, the commissioner of environmental conservation, the commissioner
39 of agriculture and markets and the commissioner of the office of parks,
40 recreation and historic preservation. Such plan shall be completed at
41 least sixty days before the submission of the mandatory referendum
42 required by section fourteen hundred fifty-bb of the tax law. If at the
43 time of referendum, the town shall have in place an adopted open space
44 plan, such plan shall be deemed sufficient to waive the preservation
45 plan requirements of this subdivision. Any monies expended from the
46 community preservation plan shall, however be consistent with the
47 purposes outlined in subdivisions three and five of this section and
48 with the open space plan for a period not to exceed twelve months.

49 8. The town board which has established a community preservation fund
50 pursuant to this section may study and consider establishing a transfer
51 of development rights program to protect community character as provided
52 for by section two hundred sixty-one-a of this chapter. All provisions
53 of such section two hundred sixty-one-a shall be complied with. If at
54 any time during the life of the community preservation fund a transfer
55 of development rights program is established, the town may utilize
56 monies from the community preservation fund in order to create and fund

1 a central bank of the transfer of development rights program. If at any
2 time during the life of the community preservation fund, a transfer of
3 development rights program is repealed by the town, all monies from the
4 central bank shall be returned to the community preservation fund.

5 9. No interests or rights in real property shall be acquired pursuant
6 to this section until a public hearing is held as required by section
7 two hundred forty-seven of the general municipal law; provided, however,
8 that nothing herein shall prevent the town board from entering into a
9 conditional purchase agreement before a public hearing is held. Any
10 resolution of the town board approving an acquisition of rights or
11 interest in real property pursuant to this section, shall find that
12 acquisition was the best alternative for the protection of community
13 character of all the reasonable alternatives available to the town.

14 10. Rights or interest in real property acquired pursuant to this
15 section shall be administered and managed in a manner which (a) allows
16 public use and enjoyment in a manner compatible with the natural,
17 scenic, historic and open space character of such lands; (b) preserves
18 the native biological diversity of such lands; (c) with regard to open
19 spaces, limits improvements to enhancing access for passive use of such
20 lands such as nature trails, boardwalks, bicycle paths, and peripheral
21 parking areas provided that such improvements do not degrade the ecolog-
22 ical value of the land or threaten essential wildlife habitat; and (d)
23 preserves cultural property consistent with accepted standards for
24 historic preservation. Notwithstanding any other provision of this
25 subdivision there shall be no right to public use and enjoyment of land
26 used in conjunction with a farm operation as defined by subdivision
27 eleven of section three hundred one of the agriculture and markets law.
28 In furthering the purposes of this section, the town may enter into
29 agreements with corporations organized under the not-for-profit corpo-
30 ration law and engage in land trust activities to manage lands including
31 less than fee interests acquired pursuant to the provisions of this
32 section, provided that any such agreement shall contain a provision that
33 such corporation shall keep the lands accessible to the public unless
34 such corporation shall demonstrate to the satisfaction of the town that
35 public accessibility would be detrimental to the lands or any natural
36 resources associated therewith.

37 11. Rights or interests in real property acquired with monies from
38 such fund shall not be sold, leased, exchanged, donated, or otherwise
39 disposed of or used for other than the purposes permitted by this
40 section without the express authority of an act of the state legisla-
41 ture, which shall provide for the substitution of other lands of equal
42 environmental value and fair market value and reasonably equivalent
43 usefulness and location to those to be discontinued, sold or disposed
44 of, and such other requirements as shall be approved by the state legis-
45 lature. Any conservation easements, created under title three of article
46 forty-nine of the environmental conservation law, which are acquired
47 with monies from such fund may only be modified or extinguished as
48 provided in section 49-0307 of such law. Nothing in this section shall
49 preclude the town, by local law, from establishing additional
50 restrictions to the alienation of lands acquired pursuant to this
51 section. This subdivision shall not apply to the sale of development
52 rights by the town acquired pursuant to this section, where said sale is
53 made by a central bank created by the town, pursuant to a transfer of
54 development rights program established by the town pursuant to section
55 two hundred sixty-one-a of this chapter, provided, however that (a) the
56 lands from which said development rights were acquired shall remain

1 preserved in perpetuity by a permanent conservation easement or other
2 instrument that similarly preserves the community character referenced
3 in subdivision five of this section, and (b) the proceeds from such sale
4 shall be deposited in the community preservation fund.

5 § 2. The tax law is amended by adding a new article 31-K to read as
6 follows:

7 ARTICLE 31-K

8 TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF CLARKSTOWN

9 Section 1450-aa. Definitions.

10 1450-bb. Imposition of tax.

11 1450-cc. Payment of tax.

12 1450-dd. Liability for tax.

13 1450-ee. Exemptions.

14 1450-ff. Credit.

15 1450-gg. Cooperative housing corporation transfers.

16 1450-hh. Designation of agents.

17 1450-ii. Liability of recording officer.

18 1450-jj. Refunds.

19 1450-kk. Deposit and disposition of revenue.

20 1450-ll. Judicial review.

21 1450-mm. Apportionment.

22 1450-nn. Miscellaneous.

23 1450-oo. Returns to be secret.

24 1450-pp. Foreclosure proceedings.

25 § 1450-aa. Definitions. When used in this article, unless otherwise
26 expressly stated, the following words and terms shall have the following
27 meanings:

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

34 2. "Controlling interest" means: (a) in the case of a corporation,
35 either fifty percent or more of the total combined voting power of all
36 classes of stock of such corporation, or fifty percent or more of the
37 capital, profits or beneficial interest in such voting stock of such
38 corporation; and (b) in the case of a partnership, association, trust or
39 other entity, fifty percent or more of the capital, profits or benefi-
40 cial interest in such partnership, association, trust or other entity.

41 3. "Real property" means every estate or right, legal or equitable,
42 present or future, vested or contingent, in lands, tenements or heredi-
43 taments, including buildings, structures and other improvements thereon,
44 which are located in whole or in part within the town of Clarkstown. It
45 shall not include rights to sepulture.

46 4. "Consideration" means the price actually paid or required to be
47 paid for the real property or interest therein, including payment for an
48 option or contract to purchase real property, whether or not expressed
49 in the deed and whether paid or required to be paid by money, property,
50 or any other thing of value. It shall include the cancellation or
51 discharge of an indebtedness or obligation. It shall also include the
52 amount of any mortgage, purchase money mortgage, lien or other encum-
53 brance, whether or not the underlying indebtedness is assumed or taken
54 subject to.

55 (a) In the case of a creation of a leasehold interest or the granting
56 of an option with use and occupancy of real property, consideration

1 shall include, but not be limited to, the value of the rental and other
2 payments attributable to the use and occupancy of the real property or
3 interest therein, the value of any amount paid for an option to purchase
4 or renew and the value of rental or other payments attributable to the
5 exercise of any option to renew.

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

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

17 (d) In the case of an assignment or surrender of a leasehold interest
18 or the assignment or surrender of an option or contract to purchase real
19 property, consideration shall not include the value of the remaining
20 rental payments required to be made pursuant to the terms of such lease
21 or the amount to be paid for the real property pursuant to the terms of
22 the option or contract being assigned or surrendered.

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

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

1 instrument given to perfect or correct a recorded mortgage; or a release
2 of lien of tax pursuant to this chapter or the internal revenue code.

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

10 7. "Grantor" means the person making the conveyance of real property
11 or interest therein. Where the conveyance consists of a transfer or an
12 acquisition of a controlling interest in an entity with an interest in
13 real property, "grantor" means the entity with an interest in real prop-
14 erty or a shareholder or partner transferring stock or partnership
15 interest, respectively.

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

18 9. "Fund" means a community preservation fund created pursuant to
19 section sixty-four-m of the town law.

20 10. "Recording officer" means the county clerk of the county of Rock-
21 land.

22 11. "Town" means the town of Clarkstown, county of Rockland.

23 12. "Treasurer" means the treasurer of the county of Rockland.

24 13. "Town supervisor" means the town supervisor of the town of Clarks-
25 town.

26 14. "Tax" shall mean the real estate transfer tax imposed pursuant to
27 section fourteen hundred fifty-bb of this article or, if the context
28 clearly indicates, shall mean the real estate transfer tax imposed
29 pursuant to article thirty-one of this chapter.

30 15. "Residential real property" means property which satisfies at
31 least one of the following conditions:

32 (a) the property classification code assigned to the property on the
33 latest final assessment roll, as reported on the transfer report form,
34 indicates that the property is a one, two or three family home or a
35 rural residence; or

36 (b) the transfer report indicates that the property is a one, two or
37 three family residential property that has been newly constructed on
38 vacant land; or

39 (c) the transfer report form indicates that the property is a residen-
40 tial condominium.

41 § 1450-bb. Imposition of tax. Notwithstanding any other provisions of
42 law to the contrary, the town of Clarkstown, acting through its town
43 board, is hereby authorized and empowered to adopt a local law imposing
44 in such town a tax on each conveyance of real property or interest ther-
45 ein not to exceed a maximum of three-quarters of one percent of the
46 consideration for such conveyance, subject to the exemptions set forth
47 in section fourteen hundred fifty-ee of this article; any such local law
48 shall fix the rate of such tax. Provided, however, any such local law
49 imposing, repealing or reimposing such tax shall be subject to a manda-
50 tory referendum pursuant to section twenty-three of the municipal home
51 rule law. Notwithstanding the foregoing, prior to adoption of such local
52 law, the town must establish a community preservation fund pursuant to
53 section sixty-four-m of the town law. Revenues from such tax shall be
54 deposited in such fund and may be used solely for the purposes of such
55 fund. Such local law shall apply to any conveyance occurring on or after
56 the first day of a month to be designated by such town board, which is

1 not less than sixty days after the enactment of such local law, but
2 shall not apply to conveyances made on or after such date pursuant to
3 binding written contracts entered into prior to such date, provided that
4 the date of execution of such contract is confirmed by independent
5 evidence such as the recording of the contract, payment of a deposit or
6 other facts and circumstances as determined by the treasurer.

7 § 1450-cc. Payment of tax. 1. The real estate transfer tax imposed
8 pursuant to this article shall be paid to the treasurer or the recording
9 officer acting as the agent of the treasurer upon designation as such
10 agent by the treasurer. Such tax shall be paid at the same time as the
11 real estate transfer tax imposed by article thirty-one of this chapter
12 is required to be paid. Such treasurer or recording officer shall
13 endorse upon each deed or instrument effecting a conveyance a receipt
14 for the amount of the tax so paid.

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

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

34 § 1450-dd. Liability for tax. 1. The real estate transfer tax shall be
35 paid by the grantee. If the grantee has failed to pay the tax imposed
36 pursuant to this article or if the grantee is exempt from such tax, the
37 grantor shall have the duty to pay the tax. Where the grantor has the
38 duty to pay the tax because the grantee has failed to pay the tax, such
39 tax shall be the joint and several liability of the grantee and the
40 grantor.

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

49 § 1450-ee. Exemptions. 1. The following shall be exempt from the
50 payment of the real estate transfer tax imposed by this article:

51 (a) The state of New York, or any of its agencies, instrumentalities,
52 political subdivisions, or public corporations (including a public
53 corporation created pursuant to an agreement or compact with another
54 state or the Dominion of Canada); and

55 (b) The United Nations, the United States of America or any of its
56 agencies or instrumentalities.

1 2. The tax shall not apply to any of the following conveyances:

2 (a) Conveyances to the United Nations, the United States of America,
3 the state of New York, or any of their instrumentalities, agencies or
4 political subdivisions (or any public corporation, including a public
5 corporation created pursuant to agreement or compact with another state
6 or the Dominion of Canada);

7 (b) Conveyances which are or were used to secure a debt or other obli-
8 gation;

9 (c) Conveyances which, without additional consideration, confirm,
10 correct, modify or supplement a deed previously recorded;

11 (d) Conveyances of real property without consideration and otherwise
12 than in connection with a sale, including deeds conveying realty as bona
13 fide gifts;

14 (e) Conveyances given in connection with a tax sale;

15 (f) Conveyances to effectuate a mere change of identity or form of
16 ownership or organization where there is no change in beneficial owner-
17 ship, other than conveyances to a cooperative housing corporation of the
18 real property comprising the cooperative dwelling or dwellings;

19 (g) Conveyances which consist of a deed of partition;

20 (h) Conveyances given pursuant to the federal bankruptcy act;

21 (i) Conveyances of real property which consist of the execution of a
22 contract to sell real property without the use or occupancy of such
23 property or the granting of an option to purchase real property without
24 the use or occupancy of such property;

25 (j) Conveyances of real property or a portion or portions of real
26 property that are the subject of one or more of the following develop-
27 ment restrictions:

28 (1) agricultural, conservation, scenic, or an open space easement;

29 (2) covenants or restrictions prohibiting development where the prop-
30 erty or portion of property being conveyed has had its development
31 rights permanently removed;

32 (3) a purchase of development rights agreement where the property or
33 portion of property being conveyed has had its development rights perma-
34 nently removed;

35 (4) a transfer of development rights agreement, where the property
36 being conveyed has had its development rights removed;

37 (5) real property subject to any locally adopted land preservation
38 agreement, provided said exemption is included in the local law imposing
39 the tax authorized by this article;

40 (k) Conveyances of real property, where the property is viable agri-
41 cultural land as defined in subdivision seven of section three hundred
42 one of the agriculture and markets law and the entire property to be
43 conveyed is to be made subject to one of the development restrictions
44 provided for in subparagraph two of paragraph (j) of this subdivision
45 provided that said development restriction precludes the conversion of
46 the property to a non-agricultural use for at least eight years from the
47 date of transfer, and said development restriction is evidenced by an
48 easement, agreement, or other suitable instrument which is to be
49 conveyed to the town simultaneously with the conveyance of the real
50 property; or

51 (l) Conveyances of real property for open space, parks, or historic
52 preservation purposes to any not-for-profit tax exempt corporation oper-
53 ated for conservation, environmental, or historic preservation purposes.

54 3. An exemption from the tax which is equal to the median sales price
55 of residential real property within the applicable county, as determined
56 by the office of real property services pursuant to section four hundred

1 twenty-five of the real property tax law, shall be allowed on the
2 consideration of the conveyance of improved or unimproved real property
3 or an interest therein.

4 § 1450-ff. Credit. A grantee shall be allowed a credit against the tax
5 due on a conveyance of real property to the extent tax was paid by such
6 grantee on a prior creation of a leasehold of all or a portion of the
7 same real property or on the granting of an option or contract to
8 purchase all or a portion of the same real property by such grantee.
9 Such credit shall be computed by multiplying the tax paid on the
10 creation of the leasehold or on the granting of the option or contract
11 by a fraction, the numerator of which is the value of the consideration
12 used to compute such tax paid which is not yet due to such grantor on
13 the date of the subsequent conveyance (and which such grantor will not
14 be entitled to receive after such date), and the denominator of which is
15 the total value of the consideration used to compute such tax paid.

16 § 1450-gg. Cooperative housing corporation transfers. 1. Notwith-
17 standing the definition of "controlling interest" contained in subdivi-
18 sion two of section fourteen hundred fifty-aa of this article or
19 anything to the contrary contained in subdivision five of section four-
20 teen hundred fifty-aa of this article, the tax imposed pursuant to this
21 article shall apply to (a) the original conveyance of shares of stock in
22 a cooperative housing corporation in connection with the grant or trans-
23 fer of a proprietary leasehold by the cooperative corporation or cooper-
24 ative plan sponsor, and (b) the subsequent conveyance of such stock in a
25 cooperative housing corporation in connection with the grant or transfer
26 of a proprietary leasehold by the owner thereof. With respect to any
27 such subsequent conveyance where the property is an individual residen-
28 tial unit, the consideration for the interest conveyed shall exclude the
29 value of any liens on certificates of stock or other evidences of an
30 ownership interest in and a proprietary lease from a corporation or
31 partnership formed for the purpose of cooperative ownership of residen-
32 tial interest in real estate remaining thereon at the time of convey-
33 ance. In determining the tax on a conveyance described in paragraph (a)
34 of this subdivision, a credit shall be allowed for a proportionate part
35 of the amount of any tax paid upon the conveyance to the cooperative
36 housing corporation of the real property comprising the cooperative
37 dwelling or dwellings to the extent that such conveyance effectuated a
38 mere change of identity or form of ownership of such property and not a
39 change in the beneficial ownership of such property. The amount of the
40 credit shall be determined by multiplying the amount of tax paid upon
41 the conveyance to the cooperative housing corporation by a percentage
42 representing the extent to which such conveyance effectuated a mere
43 change of identity or form of ownership and not a change in the benefi-
44 cial ownership of such property, and then multiplying the resulting
45 product by a fraction, the numerator of which shall be the number of
46 shares of stock conveyed in a transaction described in paragraph (a) of
47 this subdivision, and the denominator of which shall be the total number
48 of shares of stock of the cooperative housing corporation (including any
49 stock held by the corporation). In no event, however, shall such credit
50 reduce the tax, on a conveyance described in paragraph (a) of this
51 subdivision, below zero, nor shall any such credit be allowed for a tax
52 paid more than twenty-four months prior to the date on which occurs the
53 first in a series of conveyances of shares of stock in an offering of
54 cooperative housing corporation shares described in paragraph (a) of
55 this subdivision.

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

12 § 1450-hh. Designation of agents. The treasurer is authorized to
13 designate the recording officer to act as their agent for purposes of
14 collecting the tax authorized by this article. The treasurer shall
15 provide for the manner in which such person may be designated as their
16 agent subject to such terms and conditions as the treasurer shall
17 prescribe. The real estate transfer tax shall be paid to such agent as
18 provided in section fourteen hundred fifty-cc of this article.

19 § 1450-ii. Liability of recording officer. A recording officer shall
20 not be liable for any inaccuracy in the amount of tax imposed pursuant
21 to this article that they shall collect so long as they shall compute
22 and collect such tax on the amount of consideration or the value of the
23 interest conveyed as such amounts are provided to them by the person
24 paying the tax.

25 § 1450-jj. Refunds. Whenever the treasurer shall determine that any
26 moneys received under the provisions of the local law enacted pursuant
27 to this article were paid in error, they may cause such moneys to be
28 refunded pursuant to such requirements as they may prescribe, provided
29 that any application for such refund is filed with the treasurer within
30 two years from the date the erroneous payment was made.

31 § 1450-kk. Deposit and disposition of revenue. 1. All taxes, penalties
32 and interest imposed by the town under the authority of section fourteen
33 hundred fifty-bb of this article, which are collected by the treasurer
34 or their agents, shall be deposited in a single trust fund for the town
35 and shall be kept in trust and separate and apart from all other monies
36 in possession of the treasurer. Moneys in such fund shall be deposited
37 and secured in the manner provided by section ten of the general municip-
38 al law. Pending expenditure from such fund, moneys therein may be
39 invested in the manner provided in section eleven of the general municip-
40 al law. Any interest earned or capital gain realized on the moneys so
41 deposited or invested shall accrue to and become part of such fund.

42 2. The treasurer shall retain such amount as they may determine to be
43 necessary for refunds with respect to the tax imposed by the town, under
44 the authority of section fourteen hundred fifty-bb of this article, out
45 of which the treasurer shall pay any refunds of such taxes to those
46 taxpayers entitled to a refund pursuant to the provisions of this arti-
47 cle.

48 3. The treasurer, after reserving such refunds, shall on or before the
49 twelfth day of each month pay to the town supervisor the taxes, penal-
50 ties and interest imposed by the town under the authority of section
51 fourteen hundred fifty-bb of this article, collected by the treasurer,
52 pursuant to this article during the next preceding calendar month. The
53 amount so payable shall be certified to the town supervisor by the trea-
54 surer, who shall not be held liable for any inaccuracy in such certif-
55 ication. Provided, however, any such certification may be based on such
56 information as may be available to the treasurer at the time such

1 certification must be made under this section. Where the amount so paid
2 over to the town in any such distribution is more or less than the
3 amount due to the town, the amount of the overpayment or underpayment
4 shall be certified to the town supervisor by the treasurer, who shall
5 not be held liable for any inaccuracy in such certification. The amount
6 of the overpayment or underpayment shall be so certified to the town
7 supervisor as soon after the discovery of the overpayment or underpay-
8 ment as reasonably possible and subsequent payments and distributions by
9 the treasurer to the town shall be adjusted by subtracting the amount of
10 any such overpayment from or by adding the amount of any such underpay-
11 ment to such number of subsequent payments and distributions as the
12 treasurer and town supervisor shall consider reasonable in view of the
13 overpayment or underpayment and all other facts and circumstances.

14 4. All monies received from the treasurer shall be deposited in the
15 fund of the town, pursuant to section sixty-four-m of the town law.

16 § 1450-11. Judicial review. 1. Any final determination of the amount
17 of any tax payable under section fourteen hundred fifty-cc of this arti-
18 cle shall be reviewable for error, illegality or unconstitutionality or
19 any other reason whatsoever by a proceeding under article seventy-eight
20 of the civil practice law and rules if application therefor is made to
21 the supreme court within four months after the giving of the notice of
22 such final determination, provided, however, that any such proceeding
23 under article seventy-eight of the civil practice law and rules shall
24 not be instituted unless (a) the amount of any tax sought to be
25 reviewed, with such interest and penalties thereon as may be provided
26 for by local law shall be first deposited and there is filed an under-
27 taking, issued by a surety company authorized to transact business in
28 this state and approved by the state superintendent of insurance as to
29 solvency and responsibility, in such amount as a justice of the supreme
30 court shall approve to the effect that if such proceeding be dismissed
31 or the tax confirmed the petitioner will pay all costs and charges which
32 may accrue in the prosecution of such proceeding or (b) at the option of
33 the petitioner, such undertaking may be in a sum sufficient to cover the
34 taxes, interest and penalties stated in such determination, plus the
35 costs and charges which may accrue against it in the prosecution of the
36 proceeding, in which event the petitioner shall not be required to pay
37 such taxes, interest or penalties as a condition precedent to the appli-
38 cation.

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

53 § 1450-mm. Apportionment. A local law adopted by the town of Clarks-
54 town, pursuant to this article, shall provide for a method of apportion-
55 ment for determining the amount of tax due whenever the real property or
56 interest therein is situated within and without the town.

1 § 1450-nn. Miscellaneous. A local law adopted by the town of Clarks-
2 town, pursuant to this article, may contain such other provisions as the
3 town deems necessary for the proper administration of the tax imposed
4 pursuant to this article, including provisions concerning the determi-
5 nation of tax, the imposition of interest on underpayments and overpay-
6 ments and the imposition of civil penalties. Such provisions shall be
7 identical to the corresponding provisions of the real estate transfer
8 tax imposed by article thirty-one of this chapter, so far as such
9 provisions can be made applicable to the tax imposed pursuant to this
10 article.

11 § 1450-oo. Returns to be secret. 1. Except in accordance with proper
12 judicial order or as otherwise provided by law, it shall be unlawful for
13 the treasurer or any officer or employee of the county or town, includ-
14 ing any person engaged or retained on an independent contract basis, to
15 divulge or make known in any manner the particulars set forth or
16 disclosed in any return required under a local law enacted pursuant to
17 this article. However, that nothing in this section shall prohibit the
18 recording officer from making a notation on an instrument effecting a
19 conveyance indicating the amount of tax paid. No recorded instrument
20 effecting a conveyance shall be considered a return for purposes of this
21 section.

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

34 3. Nothing herein shall be construed to prohibit the delivery to a
35 grantor or grantee of an instrument effecting a conveyance or the duly
36 authorized representative of a grantor or grantee of a certified copy of
37 any return filed in connection with such instrument or to prohibit the
38 publication of statistics so classified as to prevent the identification
39 of particular returns and the items thereof, or the inspection by the
40 legal representatives of such county or town of the return of any
41 taxpayer who shall bring action to set aside or review the tax based
42 thereon.

43 4. Any officer or employee of such county or town who willfully
44 violates the provisions of this section shall be dismissed from office
45 and be incapable of holding any public office in this state for a period
46 of five years thereafter.

47 § 1450-pp. Foreclosure proceedings. Where the conveyance consists of
48 transfer of property made as a result of an order of the court in a
49 foreclosure proceeding ordering the sale of such property, the referee
50 or sheriff effectuating such transfer shall not be liable for any inter-
51 est or penalties that are authorized pursuant to this article or article
52 thirty-seven of this chapter.

53 § 3. Severability. If any clause, sentence, paragraph, subdivision,
54 section or part of this act shall be adjudged by any court of competent
55 jurisdiction to be invalid, such judgment shall not affect, impair, or
56 invalidate the remainder thereof, but shall be confined in its operation

1 to the clause, sentence, paragraph, subdivision, section or part thereof
2 directly involved in the controversy in which such judgment shall have
3 been rendered. It is hereby declared to be the intent of the legislature
4 that this act would have been enacted even if such invalid provisions
5 had not been included herein.

6 § 4. This act shall take effect immediately; provided, however, that
7 section two of this act shall take effect on the ninetieth day after it
8 shall have become a law and shall expire and be deemed repealed on
9 December 31, 2046.