

STATE OF NEW YORK

8052

IN SENATE

March 22, 2018

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the public authorities law, the tax law, the New York state urban development corporation act, the real property tax law and the economic development law, in relation to mitigating the closure of the L subway line in the city of New York

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

1 Section 1. The public authorities law is amended by adding a new
2 section 1277-b to read as follows:

3 § 1277-b. L subway line closure mitigation plan. Notwithstanding any
4 other provision of law to the contrary, the authority shall develop a
5 plan to mitigate the individual and economic hardships experienced by a
6 temporary closure of the L subway line for repairs. Such plan shall
7 include, but need not be limited to, the following:

8 1. Discounted advertising on all authority advertising mediums for
9 businesses in the designated L subway line reconstruction area;

10 2. Signage at above ground work sites which states that businesses are
11 open. Such signage shall be provided by the company responsible for such
12 above ground work site;

13 3. Grants to be awarded to artists for the creation of works suitable
14 for display on a street, bus or ferry for the purpose of drawing visi-
15 tors to the neighborhoods in the L subway line reconstruction area;

16 4. A free shuttle bus service for transit customers in the L subway
17 line reconstruction area;

18 5. Fare parity between ferry, bus and subway lines serving as alterna-
19 tive routes during the temporary shutdown of the L subway line;

20 6. Free MetroCard transfers on ferry, bus and subway lines serving as
21 alternative routes during the temporary shutdown of the L subway line.

22 § 2. Subdivision (a) of section 1115 of the tax law is amended by
23 adding a new paragraph 45 to read as follows:

24 (45) (i) Food, beverages, goods or services sold in a business zone
25 area from April first, two thousand nineteen until July thirty-first,
26 two thousand twenty.

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

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(ii) For purposes of this paragraph, "business zone area" shall mean those businesses, in an area to be determined by the commissioner, located in the city of New York and impacted by the closure of the L subway line.

§ 3. Beginning April 1, 2019, the New York city department of transportation shall be authorized to install and operate traffic-control signal photo violation-monitoring devices along L subway line high occupancy vehicle, bus and bicycle lanes, including but not limited to, along the Williamsburg Bridge, Grand Street and any other location the commissioner of the New York city department of transportation deems necessary.

§ 4. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 16-bb to read as follows:

§ 16-bb. L subway line repairs emergency grant program. (1) There is hereby created an L subway line repairs emergency grant program for the purpose of providing financial assistance to businesses located within the L subway line business zone area during periods of repair.

(2) For the purposes of this section the following words or terms shall mean as follows:

(a) "Qualified business" shall mean a business operating within the business zone area during a period of authorized repairs, and the business has a demonstrated loss.

(b) "Business zone area" shall mean an area in which the chair of the corporation determines that repairs on the L subway line has occurred that has been certified by the commissioner for the Metropolitan Transportation Authority.

(c) "Period of authorized repairs" shall mean those dates for which the chair of the corporation determines that repairs on the L subway line has occurred for the specific portion of the business zone area.

(d) "Demonstrated loss" means a ten percent decline in taxable income in the year in which the grant is applied for compared to the business' base fiscal year.

(e) "Base fiscal year" means the tax year immediately preceding the year in which repairs began in that portion of the business zone area in which the business is located.

(3) Assistance, out of moneys made available for this program, shall be provided to qualified businesses for a period of three months for the following purposes:

(a) rental payment assistance, whether for real property or equipment and services; and

(b) utilities, including but not limited to electricity, phone, cable, internet, and water.

(4) The chairman shall establish rules and regulations to ensure that all moneys given pursuant to this section are used for the purposes specified by the applicant. If it is determined that a recipient of funds used the money in a manner inconsistent with the information set out in his or her application, the applicant shall be required to reimburse the corporation twice the amount given to the applicant.

§ 5. Article 4 of the real property tax law is amended by adding a new title 3-A to read as follows:

TITLE 3-A

TAX ABATEMENT FOR CERTAIN COMMERCIAL

PROPERTIES LOCATED WITHIN THE L SUBWAY LINE REPAIR AREA

Section 497. Definitions.

497-a. Real property tax abatement.

497-b. Eligibility requirements.

497-c. Application for certificate of abatement.

497-d. Enforcement and administration.

497-e. Reporting requirements; revocation of abatements.

497-f. Tax lien; interest and penalty.

§ 497. Definitions. When used in this title, the following terms shall mean or include:

1. "Abatement base." The lesser of: (a) two dollars and fifty cents or (b) fifty per centum of the tax liability per square foot.

2. "Abatement zone." Any area located within the repair area of the L subway line as defined by the commissioner of the metropolitan transportation authority, which has been located in such area and continually been doing business in such area during the taxable year or years in which repairs occur.

3. "Aggregate floor area." The sum of the gross areas of the several floors of a building, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

4. "Applicant." The landlord and the tenant.

5. "Benefit period." The period commencing with the first day of the month immediately following the rent commencement date and terminating no later than twenty-four months thereafter.

6. "Billable assessed value." The lesser of the taxable transitional or the taxable actual assessed value of the eligible building and the land on which the eligible building is located for the fiscal year in which the benefit period commences.

7. "Department of finance." The department of finance of the city of New York.

8. "Eligible building." A non-residential or mixed-use building located in the abatement zone. Such eligible building shall not include any building owned by a governmental agency.

9. "Eligibility period." The period commencing April first, two thousand nineteen and terminating July thirty-first, two thousand twenty.

10. "Eligible premises." Premises located in an eligible building which are occupied or used as offices (including ancillary uses) or are occupied or used as retail space.

11. "Fiscal year." The fiscal year of any city having a population of one million or more.

12. "Governmental agency." The United States of America or any agency or instrumentality thereof, the state of New York, the city of New York, any public corporation (including a body corporate and politic created pursuant to agreement or compact between the state of New York and any other state), public benefit corporation, public authority or other political subdivision of the state.

13. "Landlord." Any person who: (a) controls all non-residential portions of an eligible building, including, without limitation, the record owner, the lessee under a ground lease, any mortgagee in possession or any receiver, and

(b) who grants the right to use or occupy eligible premises to any tenant, provided that landlord shall not include any lessee who at any time during the lease term occupied or used or occupies or uses any part of the non-residential portions of such eligible building, other than premises occupied or used by such lessee to provide rental or management services to such building.

14. "Lease commencement date." The date set forth in the lease on which the term of the lease commences.

1 15. "Mixed-use building." A building used for both residential and
2 commercial purposes, provided that more than twenty-five per centum of
3 the aggregate floor area of such building is used or held out for use as
4 commercial, community facility or accessory use space.

5 16. "Person." An individual, corporation, limited liability company,
6 partnership, association, agency, trust, estate, foreign or domestic
7 government or subdivision thereof, or other entity.

8 17. "Rent commencement date." The date set forth in the lease on which
9 the obligation to pay basic fixed rent shall commence.

10 18. "Tax liability." The product obtained by multiplying the billable
11 assessed value for the fiscal year in which the benefit period commences
12 by the tax rate applicable to the eligible building for such fiscal year
13 as set by the local legislative body of any city having a population of
14 one million or more.

15 19. "Tax liability per square foot." The tax liability divided by the
16 total number of square feet in the eligible building, as listed on the
17 records of the department of finance.

18 20. "Tenant." A person (including any successors in interest) who
19 executes a lease with the landlord for the right to occupy or use the
20 eligible premises and who occupies or uses the eligible premises pursu-
21 ant to such lease. Tenant shall not include any subtenant.

22 21. "Tenant's percentage share." The percentage of the eligible
23 building's aggregate floor area allocated to the eligible premises,
24 which shall be presumed to be such percentage as set forth in the lease
25 for the eligible premises; provided that where the eligible premises
26 includes expansion premises, the "tenant's percentage share" shall be
27 calculated on the basis of the percentage of the eligible building's
28 aggregate floor area allocated solely to the expansion premises.

29 22. "Renewal tenant." A person who has an existing lease with the
30 landlord and renegotiates or renews such lease with the landlord for the
31 right to occupy or use the eligible premises.

32 § 497-a. Real property tax abatement. 1. Within a city having a popu-
33 lation of one million or more, eligible buildings containing eligible
34 premises shall receive an abatement of real property taxes during the
35 benefit period. The abatement shall be equal to the product obtained by:

36 (a) multiplying the tenant's percentage share by the number of square
37 feet in the eligible building, as listed on the records of the depart-
38 ment of finance; and

39 (b) multiplying the product obtained in paragraph (a) by the abatement
40 base.

41 2. If, as a result of application to the tax commission or a court
42 order or action by the department of finance, the billable assessed
43 value is reduced, the department of finance shall recalculate the abate-
44 ment utilizing such reduced billable assessed value. The amount equal to
45 the difference between the abatement originally granted and the abate-
46 ment as so recalculated shall be deducted from any refund otherwise
47 payable or remission otherwise due as a result of such reduction in
48 billable assessed value, and any balance of such amount remaining unpaid
49 after making any such deduction shall be paid to the department of
50 finance within thirty days from the date of mailing by the department of
51 finance of a notice of the amount payable. Such amount payable shall
52 constitute a tax lien on the eligible building as of the date of such
53 notice and, if not paid within such thirty-day period, penalty and
54 interest at the rate applicable to delinquent taxes on such eligible
55 building shall be charged and collected on such amount from the date of
56 such notice to the date of payment.

1 3. In no event shall the abatement for the eligible premises granted
2 pursuant to this title exceed the tax liability allocable to the eligi-
3 ble premises.

4 4. Notwithstanding the provisions of any lease for occupancy of non-
5 eligible premises in an eligible building or for occupancy of eligible
6 premises for which no certificate of abatement has been issued pursuant
7 to this title, a lessee of non-eligible premises or of eligible premises
8 for which no certificate of abatement has been issued pursuant to this
9 title shall not be entitled to receive directly or indirectly a
10 reduction in either the real property taxes or any rent (including addi-
11 tional rent) payable pursuant to such lease where such reduction would
12 result from an abatement of real property taxes granted pursuant to this
13 title. A landlord of an eligible building shall not allocate, credit,
14 assign or disburse any portion of an abatement granted pursuant to this
15 title to a lessee of non-eligible premises or of eligible premises for
16 which no certificate of abatement has been issued pursuant to this
17 title. A landlord shall not be required to reduce the real property
18 taxes or any rent (including additional rent) payable by expansion
19 tenants, new tenants and renewal tenants by an amount that exceeds the
20 full amount of the abatement granted pursuant to this title, but a land-
21 lord shall be required to reduce the real property taxes or any rent
22 (including additional rent) payable by expansion tenants, new tenants
23 and renewal tenants by an amount that, in the aggregate, equals the full
24 amount of the abatement granted pursuant to this title. Such reduction
25 shall be allocated in accordance with the abatement granted for the
26 eligible premises occupied by each such tenant.

27 § 497-b. Eligibility requirements. 1. No abatement shall be granted
28 pursuant to this title unless the landlord enters into a lease for
29 eligible premises with a tenant or renewal tenant and the lease
30 commencement date is within the eligibility period.

31 2. No abatement shall be granted pursuant to this title if an appli-
32 cant shall fail to meet any of the requirements of this title within
33 sixty days of the rent commencement date.

34 3. For purposes of this title, the expiration date of a lease shall be
35 determined by the expiration date set forth in such lease, without
36 giving effect to any rights of the landlord or the tenant to terminate
37 such lease prior to the expiration date set forth in such lease.

38 4. The lease for the eligible premises shall contain the following
39 provisions:

40 (a) a statement of the tenant's percentage share;

41 (b) a statement informing the tenant in at least twelve-point type
42 that:

43 (1) an application for abatement of real property taxes pursuant to
44 this title will be made for the premises;

45 (2) the rent, including amounts payable by the tenant or renewal
46 tenant for real property taxes, will accurately reflect any abatement of
47 real property taxes granted pursuant to this title for the premises; and

48 (3) all abatements granted with respect to a building pursuant to this
49 title will be revoked if, during the benefit period, real estate taxes
50 or water or sewer charges or other lienable charges are unpaid for more
51 than one year, unless such delinquent amounts are paid as provided in
52 subdivision four of section four hundred ninety-seven-e of this title.

53 5. No abatement shall be granted pursuant to this title if:

54 (a) the lease for the eligible premises provides that during the
55 initial lease term required by subdivision one of this section either
56 the landlord or the tenant or renewal tenant may terminate such lease

1 prior to the expiration date of such required initial lease term;
2 provided that such lease may provide that either the landlord or the
3 tenant may terminate such lease if:

4 (1) the other party is in default of any of such party's obligations
5 under the lease,

6 (2) the eligible premises are damaged or destroyed by fire or other
7 casualty,

8 (3) the eligible premises are rendered unusable for any reason not
9 attributable to any act or failure to act of either tenant or landlord,
10 or

11 (4) the eligible premises are acquired by eminent domain; and

12 (b) there are real property taxes, water or sewer charges or other
13 lienable charges currently due and owing on the eligible building which
14 is the subject of an application for abatement pursuant to this title,
15 unless such real property taxes or charges are currently being paid in
16 timely installments pursuant to a written agreement with the department
17 of finance or other appropriate agency.

18 6. No abatement shall be granted pursuant to this title unless the
19 applicant shall file, together with the application, an affidavit
20 setting forth the following information:

21 (a) a statement that within the seven years immediately preceding the
22 date of application for a certificate of abatement, neither the appli-
23 cant nor any person owning a substantial interest in the eligible build-
24 ing as defined in paragraph (c) of this subdivision, nor any officer,
25 director or general partner of the applicant or such person was finally
26 adjudicated by a court of competent jurisdiction to have violated
27 section two hundred thirty-five of the real property law or any section
28 of article one hundred fifty of the penal law or any similar arson law
29 of another jurisdiction with respect to any building, or was an officer,
30 director or general partner of a person at the time such person was
31 finally adjudicated to have violated any such law; and

32 (b) a statement setting forth any pending charges alleging violation
33 of section two hundred thirty-five of the real property law or any
34 section of article one hundred fifty of the penal law or any similar
35 arson law of another jurisdiction with respect to any building by the
36 applicant or any person owning a substantial interest in the eligible
37 building as defined in paragraph (c) of this subdivision, or any offi-
38 cer, director or general partner of the applicant or such person, or any
39 person for whom the applicant or person owning a substantial interest in
40 the eligible building is an officer, director or general partner.

41 (c) for purposes of this subdivision and subdivision seven of section
42 four hundred ninety-seven-e of this title, "substantial interest" shall
43 mean ownership and control of an interest of ten per centum or more in
44 the eligible building or in any person owning the eligible building.

45 § 497-c. Application for certificate of abatement. 1. Application for
46 a certificate of abatement may be made on or after April first, two
47 thousand nineteen and until sixty days after the end of the eligibility
48 period, and shall be filed with the department of finance. No applica-
49 tion may be filed prior to the date on which the lease for the eligible
50 premises is executed by the landlord and tenant.

51 2. No abatement pursuant to this title shall be granted unless the
52 applicant files an application for a certificate of abatement within
53 sixty days following the lease commencement date or within sixty days
54 following the effective date of this title, whichever is later.

55 3. In addition to any other information required by the department of
56 finance, the application for a certificate of abatement shall include an

1 abstract of the lease for the eligible premises for which an abatement
2 is being sought which abstract is signed by the landlord and the tenant.
3 Such abstract shall include the tenant's percentage share, the lease
4 commencement date, the rent commencement date, the expiration date for
5 such lease and a description of the improvements to be made to the
6 eligible premises and the common areas of the eligible building, includ-
7 ing the estimated value of such improvements.

8 4. The department of finance shall issue a certificate of abatement
9 upon determining that the applicant has submitted proof acceptable to
10 the department of finance that the applicant has met the requirements
11 set forth in this title.

12 5. The burden of proof shall be on the applicant to show by clear and
13 convincing evidence that the requirements for granting a certificate of
14 abatement have been satisfied. The department of finance shall have the
15 authority to require that statements in connection with such application
16 be made under oath.

17 6. The department of finance may provide by rule for reasonable admin-
18 istrative charges or fees necessary to defray expenses in administering
19 the abatement program provided by this title.

20 § 497-d. Enforcement and administration. The department of finance
21 shall have, in addition to any other functions, powers and duties which
22 have been or may be conferred on it by law, the following functions,
23 powers and duties:

24 1. To receive and review applications for certificates of abatement
25 under this title and issue such certificates where authorized pursuant
26 to this title.

27 2. To receive evidence of premises and building eligibility.

28 3. To receive all certificates of continuing eligibility required by
29 section four hundred ninety-seven-e of this title.

30 4. To collect all real property taxes, with interest and penalty, due
31 and owing as a result of reduction, termination or revocation of any
32 abatement granted pursuant to this title.

33 5. To make and promulgate rules to carry out the purposes of this
34 title.

35 § 497-e. Reporting requirements; revocation of abatements. 1. For the
36 duration of the applicant's benefit period, the applicant shall file
37 annually with the department of finance, on or before April first of
38 each year, a certificate of continuing eligibility confirming that the
39 eligible premises are occupied by the tenant who originally executed the
40 lease and that the eligible premises are being used for the purposes
41 described in the application. Such certificate of continuing eligibility
42 shall be on a form prescribed by the department of finance and shall
43 contain such additional information as the department of finance shall
44 require. The department of finance shall have the authority to determine
45 the abatements granted pursuant to this title upon failure of an appli-
46 cant to file such certificate by such date. The burden of proof shall be
47 on the applicant to establish continuing eligibility for benefits and
48 the department of finance shall have the authority to require that
49 statements made in such certificate shall be made under oath.

50 2. The department of finance shall revoke any abatement granted pursu-
51 ant to this title when the tenant who originally executed the lease is
52 no longer occupying the eligible premises. Such revocation shall be
53 retroactive to the date that such tenant vacated the eligible premises
54 and the department of finance shall require the landlord to pay, with
55 interest, any taxes which become payable as a result of such revocation.
56 The landlord shall notify the department of finance within thirty days

1 following the date on which such tenant vacated the eligible premises
2 and, for failure to comply with this notification requirement, shall be
3 liable for penalty calculated for the same period as interest is calcu-
4 lated pursuant to the preceding sentence.

5 3. If any portion of the premises for which an abatement has been
6 granted pursuant to this title ceases to be occupied or used as eligible
7 premises or is occupied by a subtenant, the department of finance shall
8 reduce the abatement granted pursuant to this title by an amount equal
9 to the percentage of such eligible premises which has ceased to be occu-
10 piated or used as eligible premises or is occupied by a subtenant. Such
11 reduction shall be retroactive to the date that such premises ceased to
12 be occupied or used as eligible premises or was occupied by a subtenant,
13 and the department of finance shall require the landlord to pay, with
14 interest, any taxes which become payable as a result of such reduction.
15 The landlord shall notify the department of finance within thirty days
16 following the date on which the premises ceased to be occupied or used
17 as eligible premises or was occupied by a subtenant and, for failure to
18 comply with this notification requirement, shall be liable for penalty
19 calculated for the same period as interest is calculated pursuant to
20 this subdivision.

21 4. If, during the benefit period, any real property tax or water or
22 sewer charge or other lienable charge due and payable with respect to an
23 eligible building shall remain unpaid for at least one year following
24 the date upon which such tax or charge became due and payable, all
25 abatements granted pursuant to this title with respect to such building
26 shall be revoked, unless within thirty days from the mailing of a notice
27 of revocation by the department of finance satisfactory proof is
28 presented to the department of finance that any and all delinquent taxes
29 and charges owing with respect to such building as of the date of such
30 notice have been paid in full or are currently being paid in timely
31 installments pursuant to a written agreement with the department of
32 finance or other appropriate agency. Any revocation pursuant to this
33 subdivision shall be effective with respect to real property taxes which
34 become due and payable following the date of such revocation.

35 5. The department of finance may deny, reduce, suspend, terminate or
36 revoke any abatement granted pursuant to this title whenever:

37 (a) the landlord or the tenant receiving abatement pursuant to this
38 title fails to comply with the requirements of this title or the rules
39 promulgated hereunder; or

40 (b) an application, certificate, report or other document submitted by
41 the applicant contains a false or misleading statement as to a material
42 fact or omits to state any material fact necessary in order to make the
43 statement therein not false or misleading, and may declare any applicant
44 who makes such false or misleading statement or omission to be ineligi-
45 ble for future abatement pursuant to this title for the same or other
46 property. In addition, the department of finance shall require the
47 applicant to pay, with penalty and interest, any abatement received
48 pursuant to this title as a result of such false or misleading statement
49 or omission of a material fact.

50 6. Notwithstanding any other provision of this title, the department
51 of finance shall deny, terminate or revoke any abatement applied for or
52 granted pursuant to this title upon a determination that the lease
53 between the landlord and the tenant was entered into primarily for the
54 purpose of receiving an abatement under this title. In making such
55 determination, the department of finance may consider, among other
56 factors, the relationship, if any, between the landlord and the tenant

1 and whether the business terms of such lease are consistent with the
2 business terms generally found in leases for comparable space.

3 7. (a) If any person described in the statement required by paragraph
4 (b) of subdivision six of section four hundred ninety-seven-b of this
5 title is finally adjudicated by a court of competent jurisdiction to be
6 guilty of any charge listed in such statement, the department of finance
7 shall revoke the abatement granted pursuant to this title and shall
8 require the payment, with interest, of any abatement received pursuant
9 to this title.

10 (b) The applicant shall, on the certificate of continuing eligibility,
11 state whether any charges alleging violation by the applicant or any
12 person owning a substantial interest in the eligible building, or any
13 officer, director or general partner of the applicant or person owning a
14 substantial interest in the eligible building, or any person for whom
15 the applicant or person owning a substantial interest in the eligible
16 building is an officer, director or general partner, of section two
17 hundred thirty-five of the real property law or any section of article
18 one hundred fifty of the penal law or any similar arson law of another
19 jurisdiction, are pending. For purposes of this paragraph, "substantial
20 interest" shall have the same meaning as set forth in paragraph (c) of
21 subdivision six of section four hundred ninety-seven-b of this title.

22 § 497-f. Tax lien; interest and penalty. All taxes, with interest,
23 required to be paid retroactively pursuant to this title shall consti-
24 tute a tax lien as of the date it is determined such taxes and interest
25 are owed. All interest shall be calculated from the date the taxes would
26 have been due but for the abatement granted pursuant to this title at
27 the applicable rate or rates of interest imposed by such city generally
28 for non-payment of real property tax with respect to the eligible build-
29 ing for the period in question. When a provision of this title requires
30 the payment of a penalty in addition to interest, the amount of such
31 penalty shall be equal to the amount of interest that would have been
32 payable pursuant to such provision had such interest been calculated at
33 the rate of three percent per annum.

34 § 6. Section 100 of the economic development law is amended by adding
35 a new subdivision 48 to read as follows:

36 48. to, in consultation with the New York city economic development
37 corporation, identify state owned property in Manhattan which may be
38 used as temporary showrooms for businesses affected by the temporary
39 closure of the L subway line for repairs, who have clients who are
40 unable to travel to North Brooklyn because of such temporary closure.

41 § 7. This act shall take effect immediately.