

STATE OF NEW YORK

9872

IN ASSEMBLY

April 19, 2022

Introduced by M. of A. THIELE -- read once and referred to the Committee on Housing

AN ACT to amend the private housing finance law, the tax law and the real property tax law, in relation to enacting the accessory dwelling unit incentive act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "accessory dwelling unit incentive act".

3 § 2. The private housing finance law is amended by adding a new arti-
4 cle 32 to read as follows:

ARTICLE 32

ACCESSORY DWELLING UNIT FORGIVABLE LOAN PROGRAM

Section 1290. Legislative findings and purpose.

1291. Definitions.

1292. Accessory dwelling unit forgivable loan program.

10 § 1290. Legislative findings and purpose. The legislature hereby finds
11 that according to a 2019 report from the state comptroller, millions of
12 renters and homeowners in our state struggle with high housing costs. As
13 of 2017, nearly 2.8 million New York households faced housing costs that
14 were 30 percent or more of their income, a commonly accepted benchmark
15 for housing affordability. Almost half of all renters and more than one
16 in four homeowners were in this category, according to U.S. Census
17 Bureau data. Based on criteria used by the U.S. Department of Housing
18 and Urban Development, more than 1.3 million households - including more
19 than one of every four renters - were "severely burdened" by housing
20 costs of half or more of their income. High housing costs may force
21 families and individuals to reduce or forego other necessities. Many
22 find it impossible to put aside savings for emergency needs, college or
23 retirement. Some may face eviction or conclude their only choice is to
24 move to lower-cost locations. Such outcomes have broader, harmful impli-
25 cations for New York's economy.

26 The housing affordability challenge results from a combination of
27 factors. Statewide, median rental costs rose by nearly 13 percent, after
28 adjusting for inflation, over the decade ending in 2017, compared to a
29 2.5 percent increase in median household income for renters.

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

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1 While rental and homeowner costs are generally higher in downstate
2 regions, the challenge of affordability extends throughout New York
3 State. Housing affordability can be elusive for New Yorkers in urban,
4 suburban and rural settings alike.

5 These housing affordability challenges have only been exacerbated by
6 the COVID-19 pandemic, with housing costs increasing and housing avail-
7 ability decreasing, while New Yorkers face a myriad of other economic
8 and personal challenges brought on by the pandemic. The availability of
9 affordable housing has reached crisis proportions.

10 One proven solution to augmenting the inventory of affordable housing
11 is the creation of accessory dwelling units. Accessory dwelling units
12 are attached or detached residential dwelling units that provide
13 complete independent living facilities for one or more persons located
14 on a lot with a proposed or existing primary residence. Such units
15 include permanent provisions for living, sleeping, eating, cooking, and
16 sanitation on the same lot as the single-family or multifamily dwelling.

17 One of the largest impediments to the creation of accessory dwelling
18 units, where they are already legally permitted, is the upfront capital
19 cost of permitting, design, and construction. It is the purpose of this
20 article to create a forgivable loan program for the creation of accesso-
21 ry dwelling units to provide an incentive to property owners where such
22 units are legally permitted by local government in order to increase the
23 level of affordable housing opportunities for all New Yorkers.

24 § 1291. Definitions. As used in this article, the following terms
25 shall have the following meanings:

26 1. "Accessory dwelling unit" shall mean an attached or a detached
27 residential dwelling unit that provides complete independent living
28 facilities for one or more persons which is located on a lot with a
29 proposed or existing primary residence and shall include permanent
30 provisions for living, sleeping, eating, cooking, and sanitation on the
31 same lot as the single-family or multifamily dwelling.

32 2. "Division" shall mean the New York state division of homes and
33 community renewal.

34 § 1292. Accessory dwelling unit forgivable loan program. 1. Within
35 the limit of funds available, the division shall establish an accessory
36 dwelling unit forgivable loan program, as provided for by this article.

37 2. The division shall promulgate rules and regulations necessary to
38 carry out such program, consistent with this article.

39 3. Such rules and regulations shall include the following criteria:

40 (a) The accessory dwelling unit must be located on an owner occupied
41 property.

42 (b) The forgivable loan shall include, but not be limited to, the
43 following requirements:

44 (i) the loan shall not exceed a maximum amount of seventy-five thou-
45 sand dollars or fifty percent of the eligible cost of the project,
46 whichever is less;

47 (ii) the interest rate shall be the prevailing market rate, as deter-
48 mined by division;

49 (iii) the term of the loan shall be twenty years;

50 (iv) the accessory dwelling unit must be rented to a tenant meeting
51 the income and rent guidelines established by the division;

52 (v) the loan shall be forgiven if the accessory dwelling unit is rent-
53 ed to tenants in compliance with the income and rent guidelines for the
54 entire twenty-year period;

1 (vi) the loan and rent restrictions shall be secured by a duly
2 executed legal instrument which shall be recorded against the property
3 with the appropriate local recording officer;

4 (vii) total liens, including the loan authorized by this article,
5 shall not exceed one hundred percent of the post-construction value of
6 the property at the time of the loan closing; and

7 (viii) eligible costs for the loan shall include permit fees, design,
8 and construction.

9 (c) Income for individuals occupying an accessory dwelling unit under
10 this program shall not exceed one hundred percent of the income limits
11 as established by the state of New York mortgage agency low interest
12 rate loan program in non-target categories for a region in which the
13 accessory dwelling unit is located, adjusted for household size.

14 (d) Rent limits for each accessory dwelling unit shall be calculated
15 at seventy percent of the area median income (AMI) adjusted for unit
16 size and including utility allowances.

17 (e) The division shall also certify the market rate rent for accessory
18 dwelling units on a regional basis adjusted for unit size and including
19 utility allowances.

20 (f) There shall be no income limit for the borrower.

21 (g) The division may make reasonable exceptions to these requirements
22 where they would result in an undue hardship.

23 4. An accessory dwelling unit financed with the assistance of this
24 program shall not be rented for a term less than one year.

25 5. The division shall issue an annual report, on or before July first
26 of each year, that includes an itemized list of each project financed
27 through the program, including a brief description of the project, zip
28 code, and county.

29 6. The division shall establish a program to provide technical assist-
30 ance to all homeowners seeking to create an accessory dwelling unit.

31 § 3. Section 606 of the tax law is amended by adding a new subsection
32 (nnn) to read as follows:

33 (nnn) Credit for accessory dwelling unit meeting affordable income and
34 rental guidelines. (1) A taxpayer shall be allowed a credit against the
35 tax imposed under this article, where such resident owner possesses a
36 valid certificate of occupancy for an accessory dwelling unit and rents
37 said unit in accordance with the occupancy, income, and rent guidelines
38 established for accessory dwelling units, pursuant to article thirty-two
39 of the private housing finance law.

40 (2) The credit shall be in an amount equal to fifty percent of the
41 difference between the market rate rent certified pursuant to paragraph
42 (e) of subdivision three of section twelve hundred ninety-two of the
43 private housing finance law and the amount of rent actually charged
44 under the affordable rent guidelines enacted pursuant to paragraph (d)
45 of subdivision three of section twelve hundred ninety-two of the private
46 housing finance law, but not to exceed the maximum credit of ten thou-
47 sand dollars.

48 (3) For the purposes of this subsection the term "accessory dwelling
49 unit" shall have the same meaning as provided for in subdivision one of
50 section twelve hundred ninety-one of the private housing finance law.

51 (4) To be eligible for this credit, the income and rent restrictions
52 shall be secured by a duly executed legal instrument which shall be
53 recorded against the property with the appropriate local recording offi-
54 cer. Said instrument shall be filed with any application for the credit.

55 (5) If the amount of the credit allowed under this subsection for any
56 taxable year shall exceed the taxpayer's tax for such year, the excess

1 shall be treated as an overpayment of tax to be credited or refunded in
2 accordance with the provisions of section six hundred eighty-six of this
3 article, provided, however, that no interest shall be paid thereon.

4 § 4. The real property tax law is amended by adding a new section 463
5 to read as follows:

6 § 463. Affordable accessory dwelling units. 1. After a public hearing,
7 the governing body of a county, city, town or village may adopt a local
8 law or a school district may adopt a resolution, providing for an
9 exemption pursuant to the provisions of this section. Such local law or
10 resolution may provide that an improvement to any real property used for
11 residential purposes shall be exempt from taxation and special ad valo-
12 rem levies to the extent of any increase in value attributable to such
13 improvement if such improvement is used for the purpose of an affordable
14 accessory dwelling unit, where such resident owner possesses a valid
15 certificate of occupancy for an accessory dwelling unit and rents said
16 unit in accordance with the occupancy, income, and rent guidelines
17 established for accessory dwelling units, pursuant to article thirty-two
18 of the private housing finance law. For the purposes of this section the
19 term "accessory dwelling unit" shall have the same meaning as provided
20 for in subdivision one of section twelve hundred ninety-one of the
21 private housing finance law. To be eligible for the exemption provided
22 for herein, the occupancy, income, and rent restrictions shall be
23 secured by a duly executed legal instrument which shall be recorded
24 against the property with the appropriate local recording officer.

25 2. Such exemption shall be granted only upon application by the owner
26 or all of the owners of the real property on a form prescribed and made
27 available by the commissioner. The applicant shall furnish such informa-
28 tion as the commissioner shall require. The application shall be filed
29 together with a copy of the legal instrument with the applicable occu-
30 pancy, income and rent restrictions recorded against the property with
31 the assessor of the appropriate county, city, town, or village on or
32 before the taxable status date of such county, city, town, or village.

33 3. Notwithstanding the provisions of this section or any other
34 provision of law, in a city having a population of one million or more,
35 applications for the exemption authorized pursuant to this section shall
36 be considered timely filed if they are filed on or before the fifteenth
37 day of March of the appropriate year.

38 4. If the assessor is satisfied that the applicant is entitled to an
39 exemption pursuant to this section, the assessor shall approve the
40 application and enter the taxable assessed value of the parcel for which
41 an exemption has been granted pursuant to this section on the assessment
42 roll with the taxable property, with the amount of the exemption as
43 determined pursuant to subdivision one of this section in a separate
44 column. Once granted, the exemption shall continue on the real property
45 as long as the assessor is satisfied that the applicant is entitled to
46 an exemption pursuant to this section and that the requirements provided
47 for herein continue to be met.

48 § 5. If any clause, sentence, subdivision, paragraph, section or part
49 of this act shall be adjudged by any court of competent jurisdiction to
50 be invalid, and such decision is not reversed or is otherwise deemed to
51 be final, such judgment shall not have the effect of rendering this act
52 invalid, inoperative and void.

53 § 6. This act shall take effect immediately.