S T A T E O F N E W Y O R K

10718--A

I N A S S E M B L Y

June 17, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. V. Lopez, Silver) -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law, in relation to the collection of any rent adjustment to the legal regulated rent for a major capital improvement for any housing accommodation; and to amend the real property tax law, in relation to exemption from taxation of any increase in assessed valuation of real property resulting from alterations and improvements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by chapter 749 of the laws of 1990, is amended to read as follows:

(g) There has been since July first, nineteen hundred seventy, a major capital improvement required for the operation, preservation or maintenance of the structure. An adjustment under this subparagraph [(g)] shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph [(g)] over a seven-year period. THE COLLECTION OF ANY RENT ADJUSTMENT TO THE LEGAL REGULATED RENT FOR A MAJOR CAPITAL IMPROVEMENT FOR ANY HOUSING ACCOMMODATION SHALL NOT EXCEED SIX PERCENT IN ANY YEAR FROM THE EFFECTIVE DATE OF THE ORDER GRANTING THE INCREASE OVER THE RENT SET FORTH IN THE SCHEDULE OF GROSS RENTS WITH COLLECTIBILITY OF ANY DOLLAR EXCESS ABOVE SAID SUM TO BE SPREAD FORWARD IN SIMILAR INCREMENTS AND ADDED TO THE MAXIMUM RENT AS ESTABLISHED OR SET IN FUTURE YEARS. IN NO EVENT SHALL MORE THAN ONE SIX PERCENT INCREASE IN THE MAXIMUM RENT BE COLLECTED IN THE SAME YEAR; or

S 2. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

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

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(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide (a) as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a seven-year period, based upon cash purchase price exclusive of interest or service charges. THE COLLECTION OF ANY RENT ADJUSTMENT TO THE LEGAL REGULATED RENT FOR A MAJOR CAPITAL IMPROVEMENT FOR ANY HOUSING ACCOMMODATION SHALL NOT EXCEED SIX PERCENT IN ANY YEAR FROM THE EFFECTIVE DATE OF THE ORDER GRANTING THE INCREASE OVER THE RENT SET FORTH IN THE SCHEDULE OF GROSS RENTS WITH COLLECTIBILITY OF ANY DOLLAR EXCESS ABOVE SAID SUM TO BE SPREAD FORWARD IN SIMILAR INCREMENTS AND ADDED TO THE MAXIMUM RENT AS ESTABLISHED OR SET IN FUTURE YEARS. IN NO EVENT SHALL MORE THAN ONE SIX PERCENT INCREASE IN THE MAXIMUM RENT BE COLLECTED IN THE SAME YEAR. Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

S 3. Paragraph 3 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection

act of nineteen seventy-four, as amended by chapter 749 of the laws of 1990, is amended to read as follows:

(3) there has been since January first, nineteen hundred seventy-four a major capital improvement required for the operation, preservation or maintenance of the structure. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over a seven-year period. THE COLLECTION OF ANY RENT ADJUSTMENT TO THE LEGAL REGULATED RENT FOR A MAJOR CAPITAL IMPROVEMENT FOR ANY HOUSING ACCOMMODATION SHALL NOT EXCEED SIX PERCENT IN ANY YEAR FROM THE EFFECTIVE DATE OF THE ORDER GRANTING THE INCREASE OVER THE RENT SET FORTH IN THE SCHEDULE OF GROSS RENTS WITH COLLECTIBILITY OF ANY DOLLAR EXCESS ABOVE SAID SUM TO BE SPREAD FORWARD IN SIMILAR INCREMENTS AND ADDED TO THE MAXIMUM RENT AS ESTABLISHED OR SET IN FUTURE YEARS. IN NO EVENT SHALL MORE THAN ONE SIX PERCENT INCREASE IN THE MAXIMUM RENT BE COLLECTED IN THE SAME YEAR, or

S 4. The second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 25 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

No application for adjustment of maximum rent based upon a sales price valuation shall be filed by the landlord under this subparagraph prior to six months from the date of such sale of the property. In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale. Where, however, the assessed valuation of the land exceeds four times the assessed valuation of the buildings thereon, the commission may determine a valuation of the property equal to five times the equalized assessed valuation of the buildings, for the purposes of this subparagraph. The commission may make a determination that the valuation of the property is an amount different from such equalized assessed valuation where there is a request for a reduction in such assessed valuation currently pending; or where there has been a reduction in the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of the application. Net annual return shall be the amount by which the earned income exceeds the operating expenses of the property, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the value of the buildings exclusive of the land, or the amount shown for depreciation of the buildings in the latest required federal income tax return, whichever is lower; provided, however, that (1) no allowance for depreciation of the buildings shall be included where the buildings have been fully depreciated for federal income tax purposes or on the books of the owner; or (2) the landlord who owns no more than four rental units within the state has not been fully compensated by increases in rental income sufficient to offset unavoidable increases in property taxes, fuel, utilities, insurance and repairs and maintenance, excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the property was acquired by the present owner, whichever is later; or (3) the landlord operates a hotel or rooming house or owns a cooperative apartment and has not been fully compensated by increases in rental income from the controlled housing accommodations sufficient to offset unavoidable increases in property taxes and other costs as are allocable to such controlled housing accommodations,

including costs of operation of such hotel or rooming house, but excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the landlord commenced the operation of the property, whichever is later; or (4) the landlord and tenant voluntarily enter into a valid written lease in good faith with respect to any housing accommodation, which lease provides for an increase in the maximum rent not in excess of fifteen per centum and for a term of not less than two years, except that where such lease provides for an increase in excess of fifteen per centum, the increase shall be automatically reduced to fifteen per centum; or (5) the landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations; provided that an owner shall be entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation. The permanent increase in the maximum rent for the affected housing accommodation shall be one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such permanent increase takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges provided further that an owner who is entitled to a rent increase pursuant to this clause shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The owner shall give written notice to the commission of any such adjustment pursuant to this clause; or (6) there has been, since March first, nineteen hundred fifty, an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodation therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements; or (7) there has been since March first, nineteen hundred fifty, a major capital improvement required for the operation, preservation or maintenance of the structure. THE COLLECTION OF ANY RENT ADJUSTMENT TO THE LEGAL REGULATED RENT FOR A MAJOR CAPITAL IMPROVEMENT FOR ANY HOUSING ACCOMMODATION SHALL NOT EXCEED SIX PERCENT IN ANY YEAR FROM THE EFFECTIVE DATE OF THE ORDER GRANTING THE INCREASE OVER THE RENT SET FORTH IN THE SCHEDULE OF GROSS RENTS WITH COLLECTIBILITY OF ANY DOLLAR EXCESS ABOVE SAID SUM TO BE SPREAD FORWARD IN SIMILAR INCREMENTS AND ADDED TO THE MAXIMUM RENT AS ESTABLISHED OR SET IN FUTURE YEARS. IN NO EVENT SHALL MORE THAN ONE SIX PERCENT INCREASE IN THE MAXIMUM RENT BE COLLECTED IN THE SAME YEAR; or (8) there has been since March first, nineteen hundred fifty, in structures containing more than four housing accommodations, other improvements made with the express consent of the tenants in occupancy of at least seventy-five per centum of the housing accommodations, provided, however, that no adjustment granted hereunder shall exceed fifteen per centum unless the tenants have agreed to a higher percentage of increase, as herein provided; or (9) there has been, since March first, nineteen hundred fifty, a subletting without written consent from

the landlord or an increase in the number of adult occupants who are not members of the immediate family of the tenant, and the landlord has not been compensated therefor by adjustment of the maximum rent by lease or order of the commission or pursuant to the federal act; or (10) the presence of unique or peculiar circumstances materially affecting the maximum rent has resulted in a maximum rent which is substantially lower than the rents generally prevailing in the same area for substantially similar housing accommodations.

S 5. Subdivision dd of section 11-243 of the administrative code of the city of New York, as added by local law number 41 of the city of New York for the year 1988, is amended to read as follows:

dd. [Partial waiver] WAIVER of rent adjustments attributable to major capital improvements. (1) The provisions of this subdivision apply to and are additional requirements for claiming or receiving any tax abatement under this section, except as provided in paragraphs three and four of this subdivision.

(2) The owner of the property shall file with the department of housing preservation and development, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a [portion of the total annual amount of any] rent adjustment attributable to such major capital improvement which may be granted by the New York state division of housing and community renewal pursuant to the rent stabilization code equal to [one-half of] the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. Such waiver shall commence on the date of the first collection of such rent adjustment[, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received]. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by such division, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with the New York state division of housing and community renewal. Such declaration shall be binding upon such owner, and his or her successors and assigns.

(3) The provisions of this subdivision shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with the substantial assistance of city, state or federal subsidies.

(4) The provisions of this subdivision shall apply only to alterations and improvements commenced after its effective date.

S 6. The opening paragraph of paragraph (a) of subdivision 1 of section 489 of the real property tax law, as amended by chapter 244 of the laws of 2006, is amended to read as follows:

Any city to which the multiple dwelling law is applicable, acting through its local legislative body or other governing agency, is hereby authorized and empowered, to and including June first, two thousand [eleven] FIFTEEN, to adopt and amend local laws or ordinances providing that any increase in assessed valuation of real property shall be exempt from taxation for local purposes, as provided herein, to the extent such increase results from:

S 7. The closing paragraph of subparagraph 6 of paragraph (a) of subdivision 1 of section 489 of the real property tax law, as amended by chapter 244 of the laws of 2006, is amended to read as follows:

Such conversion, alterations or improvements shall be completed within thirty-six months after the date on which same shall be started except that such thirty-six month limitation shall not apply to conversions of residential units which are registered with the loft board in accordance with article seven-C of the multiple dwelling law pursuant to subparagraph one of this paragraph. Notwithstanding the foregoing, a sixty month period for completion shall be available for alterations or improvements undertaken by a housing development fund company organized pursuant to article eleven of the private housing finance law, which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from such city if alterations and improvements are completed within seven years after the date of transfer. In addition, the local housing agency is hereby empowered to grant an extension of the period of completion for any project carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality, if such alterations or improvements are completed within sixty months from commencement of construction. Provided, further, that such conversion, alterations or improvements shall in any event be completed prior to December thirty-first, two thousand [eleven] FIFTEEN. Exemption for conversions, alterations or improvements pursuant to subparagraph one, two, three or four of this paragraph shall continue for a period not to exceed fourteen years and begin no sooner than the first quarterly tax bill immediately following the completion of such conversion, alterations or improvements. Exemption for alterations or improvements pursuant to this subparagraph or subparagraph five of this paragraph shall continue for a period not to exceed thirty-four years and shall begin no sooner than the first quarterly tax bill immediately following the completion of such alterations or improvements. Such exemption shall be equal to the increase in the valuation which is subject to exemption in full or proportionally under this subdivision for ten or thirty years, whichever is applicable. After such period of time, the amount of such exempted assessed valuation of such improvements shall be reduced by twenty percent in each succeeding year until the assessed value of the improvements are fully taxable. Provided, however, exemption for any conversion, alterations or improvements which are aided by a loan or grant under article eight, eight-A, eleven, twelve, fifteen or twenty-two of the private housing finance law, section six hundred ninety-six-a or section ninety-nine-h of the general municipal law, or section three hundred twelve of the housing act of nineteen hundred sixty-four (42 U.S.C.A. 1452b), or the Cranston-Gonzalez national affordable housing act (42 U.S.C.A. 12701 et. seq.), or started after July first, nineteen hundred eighty-three by a housing development fund company organized pursuant to article eleven of the private housing finance law which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from any city and where alterations and improvements are completed within seven years after the date of transfer may commence at the beginning of any tax quarter subsequent to the start of such conversion, alterations or improvements and prior to the completion of such conversion, alterations or improvements.

S 8. Section 489 of the real property tax law is amended by adding four new subdivisions 17, 18, 19 and 20 to read as follows:

17. (A) FOR PURPOSES OF THIS SUBDIVISION, "SUBSTANTIAL GOVERNMENTAL ASSISTANCE" SHALL MEAN:

(1) GRANTS, LOANS OR SUBSIDIES FROM ANY FEDERAL, STATE OR LOCAL AGENCY OR INSTRUMENTALITY IN FURTHERANCE OF A PROGRAM FOR THE DEVELOPMENT OF AFFORDABLE HOUSING APPROVED BY THE LOCAL HOUSING AGENCY, INCLUDING, WITHOUT LIMITATION, FINANCING OR INSURANCE PROVIDED BY THE STATE OF NEW YORK MORTGAGE AGENCY OF THE NEW YORK CITY RESIDENTIAL MORTGAGE INSURANCE CORPORATION; OR

(2) A WRITTEN AGREEMENT BETWEEN A HOUSING DEVELOPMENT FUND CORPORATION AND THE LOCAL HOUSING AGENCY LIMITING THE INCOMES OF PERSONS ENTITLED TO PURCHASE SHARES OR RENT HOUSING ACCOMMODATIONS THEREIN.

(B) ANY LOCAL LAW OR ORDINANCE PROVIDING FOR BENEFITS PURSUANT TO THIS SECTION MUST ALSO PROVIDE THAT NO BENEFITS PURSUANT TO THIS SECTION SHALL BE GRANTED FOR THE CONVERSION OF ANY NON-RESIDENTIAL BUILDING OR STRUCTURE INTO A CLASS A MULTIPLE DWELLING, COMPLETED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN, UNLESS SUCH CONVERSION WAS CARRIED OUT WITH SUBSTANTIAL GOVERNMENTAL ASSISTANCE.

18. ANY LOCAL LAW OR ORDINANCE PROVIDING FOR BENEFITS PURSUANT TO THIS SECTION MUST ALSO PROVIDE, WITH RESPECT TO CONVERSIONS, ALTERATIONS OR IMPROVEMENTS FOR WHICH APPLICATION WAS MADE AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, THAT IF SUCH CONVERSIONS, ALTERATIONS OR IMPROVEMENTS ARE NOT COMPLETED ON THE DATE UPON WHICH SUCH LOCAL HOUSING AGENCY INSPECTS THE ITEMS OF WORK CLAIMED IN SUCH APPLICATION, THE LOCAL HOUSING AGENCY SHALL REQUIRE THE APPLICANT TO PAY THE ACTUAL COST FOR ANY ADDITIONAL INSPECTIONS NEEDED TO VERIFY THE COMPLETION OF SUCH CONVERSION, ALTERATION OR IMPROVEMENT.

19. THE REVOCATION OF BENEFITS GRANTED TO ANY MULTIPLE DWELLING, BUILDING OR STRUCTURE PURSUANT TO THIS SECTION SHALL NOT EXEMPT ANY DWELLING UNIT THEREIN FROM CONTINUED COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION OR OF ANY LOCAL LAW OR ORDINANCE PROVIDING FOR BENEFITS PURSUANT TO THIS SECTION.

20. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW OR ANY LOCAL ORDINANCE PROVIDING FOR BENEFITS PURSUANT TO THIS SECTION MAY REQUIRE THAT THE APPLICATIONS FOR EXEMPTION OR ABATEMENT UNDER THIS SECTION THAT ARE FILED ON OR AFTER A DATE SPECIFIED IN SUCH LOCAL LAW OR ORDINANCE BE FILED ELECTRONICALLY.

S 9. Severability clause. If any clause, sentence, paragraph, subdivision, section or subpart of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or subpart thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 10. This act shall take effect immediately, provided, however that section 26-405 of the city rent and rehabilitation law made by section one of this act shall remain in full force and effect only so long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act; and provided further that the amendments to section 26-511 of chapter 4 of title 26 of the administrative code of the city of New York made by section two of this act shall expire on the same date as such law expires and shall not

affect the expiration of such law as provided under section 26-520 of such law; and provided further that the amendment to section 6 of the emergency tenant protection act of nineteen seventy-four made by section three of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974; and provided further that the amendment to section 4 of the emergency housing rent control law made by section four of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided in subdivision 2 of section 1 of chapter 274 of the laws of 1946; provided further, that sections six, seven and eight of this act shall be deemed to have been in full force and effect on and after December 31, 2011; provided that the amendments made to section 489 of the real property tax law by section eight of this act shall not be deemed to change the eligibility for benefits, pursuant to such section and any local law or ordinance providing for benefits pursuant to such section, as a result of conversions, alterations or improvements completed before December 31, 2011.