# STATE OF NEW YORK

221

2017-2018 Regular Sessions

# IN ASSEMBLY

(Prefiled)

January 4, 2017

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

AN ACT to amend the general municipal law, the public service law, the tax law and the real property tax law, in relation to authorizing the creation of housing opportunity zones in certain cities, towns and villages within the state

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

Section 1. The general municipal law is amended by adding a new article 19-AA to read as follows:


ARTICLE 19-AA
NEW YORK STATE HOUSING OPPORTUNITY ZONES
Section 981. Short title.
982. Legislative findings and declaration.
983. Definitions.
984. Criteria for housing opportunity zones.
985. Powers of the commissioner.
986. Property tax relief.
987. Business tax credit.
988. Reduced electricity and gas rates.
989. Exemption from sales tax.
989-a. Waiver of permit fees.
989-b. Special provisions.
989-c. Minimization of displacement.


§ 981. Short title. This article shall be known and may be cited as the "New York state housing opportunity zones act".

§ 982. Legislative findings and declaration. The high cost of housing is now a major problem for thousands of New Yorkers. Costs of acquiring or occupying acceptable housing have increased significantly in recent years. For too many households, the high cost of shelter is not merely

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

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serious, it is too often an insurmountable barrier to the achievement of a safe and decent place in which to live.

It is hereby found and declared that there exists within the state certain areas characterized by a severe shortage of safe, decent and affordable housing, dilapidated and abandoned residential structures and shrinking tax bases. Moreover, it is found that the lack of housing in these areas threatens employment growth prospects and that without adequate provision of housing and the satisfaction of housing needs, these regions of the state may not retain skilled labor and sustain the growth in employment and output of which they are capable.

§ 983. Definitions. 1. "Commissioner" shall mean the commissioner of housing and community renewal.

2. "Substantial rehabilitation" shall mean the improvement of a residential property with the assistance of any form of public housing monies to a decent, safe and sanitary condition in accordance with standards as shall be promulgated by the commissioner. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone shall not qualify as substantial rehabilitation.

§ 984. Criteria for housing opportunity zones. To be eligible for designation by the commissioner as a housing opportunity zone, an area must be characterized by a significant amount of deteriorating, substandard, vacant or abandoned residential buildings which are not being adequately repaired, renovated, upgraded, modernized or rehabilitated under existing programs so as to provide an adequate supply of safe and decent housing at costs which the residents of the area can reasonably afford, a high vacancy rate, a large number of homeless families or individuals and general economic distress. The lack of any one factor in a particular region shall not be determinative in the designation process. The designation of one housing opportunity zone within a particular region shall not preclude other areas within the region from being so designated as well, as long as the appropriate criteria exist within the area to support such a designation.

§ 985. Powers of the commissioner. The commissioner shall:

1. After consultation with the director of the budget, the chief executive officer of the state of New York mortgage agency, the executive director of the housing finance agency, the secretary of state, the commissioner of taxation and finance and the executive director of the state office of rural affairs, promulgate regulations governing (a) criteria of eligibility for housing opportunity zone designation, (b) the application process, (c) the eligibility of business enterprises for benefits referred to in section nine hundred eighty-seven of this article and (d) standards defining what comprises substantial rehabilitation as used in this article;

2. Receive and review applications for designation of areas as housing opportunity zones;

3. Solicit and review the opinions of local officials as to whether particular areas should be designated as housing opportunity zones; and

4. Make final determinations of areas as housing opportunity zones, provided, however, that all such zones shall meet the requirements of this article.

§ 986. Property tax relief. All new residential construction involving the assistance of any form of public housing monies and substantial rehabilitation of residential units with the assistance of any form of public housing monies completed subsequent to the designation of an area as a housing opportunity zone shall be entitled to an exemption from

property taxes as provided for in the real property tax law; provided that such new construction or substantial rehabilitation is done to a unit located within such zone.

§ 987. Business tax credit. Business enterprises which invest in new construction involving the assistance of any form of public housing monies or substantial rehabilitation of residential units with the assistance of any form of public housing monies located within a housing opportunity zone shall be entitled to a tax credit pursuant to subparagraph (i) of paragraph (b) of subdivision one of section two hundred ten-b and subparagraph (A) of paragraph two of subsection (a) of section six hundred six of the tax law, provided, that said construction or rehabilitation must produce a ratio of at least one unit of housing at an affordable rate for every two units that are to be sold at the prevailing market rate in the housing opportunity zone. Affordable rate shall be defined as the rate described in the housing program used and which has served as the source of the public housing monies applied to the specific projects built or rehabilitated in the housing opportunity zone.

§ 988. Reduced electricity and gas rates. Each utility providing electric service, gas service or both, other than a utility owned or operated by a municipality, shall be required to provide a reduced rate as provided for in section sixty-five-c of the public service law to residential customers residing in housing opportunity zone residential units which were newly constructed with the assistance of any form of public housing monies or which were substantially rehabilitated with the assistance of any form of public housing monies subsequent to the designation of the area as a housing opportunity zone.

§ 989. Exemption from sales tax. All materials used in the construction involving the assistance of any form of public housing monies or substantial rehabilitation with the assistance of any form of public housing monies of housing opportunity zone residential units shall be exempt from all state and local sales taxes.

§ 989-a. Waiver of permit fees. All permit fees required by the state or locality for any phase of the construction or substantial rehabilitation of housing opportunity zone residential units which have received assistance of any form of public housing monies shall be waived in total by the state or the locality.

§ 989-b. Special provisions. Each residential unit constructed with the assistance of any form of public housing monies or substantially rehabilitated with the assistance of any form of public housing monies within a housing opportunity zone shall be readily adaptable to a unit which is completely accessible by persons with handicapping conditions.

§ 989-c. Minimization of displacement. Each locality within a designated housing opportunity zone shall use its best efforts to ensure that new construction and substantial rehabilitation are carried out in such a manner as to minimize the likelihood of any involuntary physical or economic displacement of tenants and owners who reside in dwelling accommodations which are the subject of such new construction or substantial rehabilitation.

§ 2. The public service law is amended by adding a new section 65-c to read as follows:

§ 65-c. Reduced electric and gas rates for housing opportunity zone residential units. 1. The term "reduced rate" shall mean a twenty-five percent reduction prior to the imposition of gross receipts taxes pursuant to section one hundred eighty-six-a of the tax law and sales taxes

pursuant to article twenty-eight of the tax law, in the monthly amount billed to an eligible customer for electricity, gas or both.

2. A utility shall have a credit against the gross receipts tax imposed by section one hundred eighty-six-a of the tax law in the amount of one hundred percent of any loss of revenue it incurs due to the implementation of its reduced rate.

§ 3. The tax law is amended by adding a new section 4-a to read as follows:

§ 4-a. Tax credit; reduced electric and gas rates. Notwithstanding any other provision of general, special or local law to the contrary, electric or gas utility liable for a tax assessed or levied by the state pursuant to the provisions of section one hundred eighty-six-a of this chapter shall have a credit against any such tax in the amount of one hundred percent of any loss of revenue any such utility has incurred as to the implementation of a reduced rate pursuant to the provisions of section sixty-five-c of the public service law. The commissioner is hereby authorized to adopt rules and regulations to implement the provisions of this section.

§ 4. Subparagraph (i) of paragraph (b) of subdivision 1 of section 210-b of the tax law, as amended by section 31 of part T of chapter 59 of the laws of 2015, is amended to read as follows:

(i) A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture [~~or~~], commercial fishing, or eligible business enterprise as determined by the commissioner of housing and community renewal pursuant to section nine hundred eighty-five of the general municipal law, (B) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (C) research and development property, or (D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, (E) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, (F) principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in subparagraph one of paragraph (a) of section fourteen hundred ten of the not-for-profit corporation law or as

an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto, or (G) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. For purposes of clauses (D), (E) and (F) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment advisor, national securities exchange or board of trade, is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment advisor, national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D) and (E) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment advisor under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E) and (F) of this subparagraph unless the property is first placed in service before October first, two thousand fifteen and (i) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state or (ii) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (iii) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (iii) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subdivision, the term "goods" shall not include electricity.

§ 5. Subparagraph (A) of paragraph 2 of subsection (a) of section 606 of the tax law, as amended by chapter 637 of the laws of 2008, is amended to read as follows:

(A) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (i) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture [~~or~~], commercial fishing, **or eligible business enterprise as determined by the commissioner of housing and community renewal pursuant to section nine hundred eighty-five of the general municipal law,** (ii) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section 475(e) of the Internal Revenue Code, (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or (vi) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. For purposes of clauses (iv) and (v) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, or registered investment adviser is allowed a credit under this subsection if the property is used by its affiliated regulated broker, dealer or registered investment adviser in accordance with this subsection. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (iv) and (v) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (iv) and (v) of this subparagraph unless (I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (II) the average number

of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For the purposes of clause (III) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subsection, the term "goods" shall not include electricity.

§ 6. The real property tax law is amended by adding a new section 420-d to read as follows:

**§ 420-d. Real property tax abatements. Newly constructed or substantially rehabilitated residential dwellings located within housing opportunity zones designated pursuant to article nineteen-AA of the general municipal law shall be exempt from all taxes imposed by a municipal corporation, including those imposed by a school district, other than assessments for local improvements, during construction or rehabilitation, so long as such dwelling is used for residential unit purposes for a period not to exceed ten years in the aggregate after the taxable status date immediately following the completion thereof, calculated not to exceed the following exemptions: two years of full exemption followed by two years of exemption from eighty percent of such taxation, followed by three years of exemption from sixty percent of such taxation, followed by two years of exemption from forty percent of such taxation, followed by two years of exemption from twenty percent of such taxation; provided that taxes shall be paid during any such period at least in the amount of the taxes paid on such land and improvements thereon during the tax year preceding the commencement of such construction or rehabilitation and that the exemption from taxes shall not be availed of concurrently under any other law.**

§ 7. This act shall take effect on the first of October next succeeding the date on which it shall have become a law.