

STATE OF NEW YORK

2499

2019-2020 Regular Sessions

IN ASSEMBLY

January 23, 2019

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

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

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

13 2. "Substantial rehabilitation" shall mean the improvement of a resi-
14 dential property with the assistance of any form of public housing
15 monies to a decent, safe and sanitary condition in accordance with stan-
16 dards as shall be promulgated by the commissioner. Substantial rehabili-
17 tation may vary in degree from gutting and extensive reconstruction to
18 the cure of substantial accumulation of deferred maintenance. Cosmetic
19 improvements alone shall not qualify as substantial rehabilitation.

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

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

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

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

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

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

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

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

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

19 § 988. Reduced electricity and gas rates. Each utility providing elec-
20 tric service, gas service or both, other than a utility owned or oper-
21 ated by a municipality, shall be required to provide a reduced rate as
22 provided for in section sixty-five-c of the public service law to resi-
23 dential customers residing in housing opportunity zone residential units
24 which were newly constructed with the assistance of any form of public
25 housing monies or which were substantially rehabilitated with the
26 assistance of any form of public housing monies subsequent to the desig-
27 nation of the area as a housing opportunity zone.

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

33 § 989-a. Waiver of permit fees. All permit fees required by the state
34 or locality for any phase of the construction or substantial rehabili-
35 tation of housing opportunity zone residential units which have received
36 assistance of any form of public housing monies shall be waived in total
37 by the state or the locality.

38 § 989-b. Special provisions. Each residential unit constructed with
39 the assistance of any form of public housing monies or substantially
40 rehabilitated with the assistance of any form of public housing monies
41 within a housing opportunity zone shall be readily adaptable to a unit
42 which is completely accessible by persons with handicapping conditions.

43 § 989-c. Minimization of displacement. Each locality within a desig-
44 ated housing opportunity zone shall use its best efforts to ensure that
45 new construction and substantial rehabilitation are carried out in such
46 a manner as to minimize the likelihood of any involuntary physical or
47 economic displacement of tenants and owners who reside in dwelling
48 accommodations which are the subject of such new construction or
49 substantial rehabilitation.

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

52 § 65-c. Reduced electric and gas rates for housing opportunity zone
53 residential units. 1. The term "reduced rate" shall mean a twenty-five
54 percent reduction prior to the imposition of gross receipts taxes pursu-
55 ant to section one hundred eighty-six-a of the tax law and sales taxes

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

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

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

9 § 4-a. Tax credit; reduced electric and gas rates. Notwithstanding
10 any other provision of general, special or local law to the contrary,
11 electric or gas utility liable for a tax assessed or levied by the state
12 pursuant to the provisions of section one hundred eighty-six-a of this
13 chapter shall have a credit against any such tax in the amount of one
14 hundred percent of any loss of revenue any such utility has incurred as
15 to the implementation of a reduced rate pursuant to the provisions of
16 section sixty-five-c of the public service law. The commissioner is
17 hereby authorized to adopt rules and regulations to implement the
18 provisions of this section.

19 § 4. Subparagraph (i) of paragraph (b) of subdivision 1 of section
20 210-B of the tax law, as amended by section 2 of part P of chapter 59 of
21 the laws of 2017, is amended to read as follows:

22 (i) A credit shall be allowed under this subdivision with respect to
23 tangible personal property and other tangible property, including build-
24 ings and structural components of buildings, which are: depreciable
25 pursuant to section one hundred sixty-seven of the internal revenue
26 code, have a useful life of four years or more, are acquired by purchase
27 as defined in section one hundred seventy-nine (d) of the internal
28 revenue code, have a situs in this state and are (A) principally used by
29 the taxpayer in the production of goods by manufacturing, processing,
30 assembling, refining, mining, extracting, farming, agriculture, horti-
31 culture, floriculture, viticulture ~~or~~, commercial fishing, or eligible
32 business enterprise as determined by the commissioner of housing and
33 community renewal pursuant to section nine hundred eighty-five of the
34 general municipal law, (B) industrial waste treatment facilities or air
35 pollution control facilities, used in the taxpayer's trade or business,
36 (C) research and development property, or (D) principally used in the
37 ordinary course of the taxpayer's trade or business as a broker or deal-
38 er in connection with the purchase or sale (which shall include but not
39 be limited to the issuance, entering into, assumption, offset, assign-
40 ment, termination, or transfer) of stocks, bonds or other securities as
41 defined in section four hundred seventy-five (c)(2) of the Internal
42 Revenue Code, or of commodities as defined in section four hundred
43 seventy-five (e) of the Internal Revenue Code, (E) principally used in
44 the ordinary course of the taxpayer's trade or business of providing
45 investment advisory services for a regulated investment company as
46 defined in section eight hundred fifty-one of the Internal Revenue Code,
47 or lending, loan arrangement or loan origination services to customers
48 in connection with the purchase or sale (which shall include but not be
49 limited to the issuance, entering into, assumption, offset, assignment,
50 termination, or transfer) of securities as defined in section four
51 hundred seventy-five (c)(2) of the Internal Revenue Code, (F) principal-
52 ly used in the ordinary course of the taxpayer's business as an exchange
53 registered as a national securities exchange within the meaning of
54 sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a
55 board of trade as defined in subparagraph one of paragraph (a) of
56 section fourteen hundred ten of the not-for-profit corporation law or as

1 an entity that is wholly owned by one or more such national securities
2 exchanges or boards of trade and that provides automation or technical
3 services thereto, or (G) principally used as a qualified film production
4 facility including qualified film production facilities having a situs
5 in an empire zone designated as such pursuant to article eighteen-B of
6 the general municipal law, where the taxpayer is providing three or more
7 services to any qualified film production company using the facility,
8 including such services as a studio lighting grid, lighting and grip
9 equipment, multi-line phone service, broadband information technology
10 access, industrial scale electrical capacity, food services, security
11 services, and heating, ventilation and air conditioning. For purposes of
12 clauses (D), (E) and (F) of this subparagraph, property purchased by a
13 taxpayer affiliated with a regulated broker, dealer, registered invest-
14 ment advisor, national securities exchange or board of trade, is allowed
15 a credit under this subdivision if the property is used by its affil-
16 iated regulated broker, dealer, registered investment advisor, national
17 securities exchange or board of trade in accordance with this subdivi-
18 sion. For purposes of determining if the property is principally used in
19 qualifying uses, the uses by the taxpayer described in clauses (D) and
20 (E) of this subparagraph may be aggregated. In addition, the uses by the
21 taxpayer, its affiliated regulated broker, dealer and registered invest-
22 ment advisor under either or both of those clauses may be aggregated.
23 Provided, however, a taxpayer shall not be allowed the credit provided
24 by clauses (D), (E) and (F) of this subparagraph unless the property is
25 first placed in service before October first, two thousand fifteen and
26 (i) eighty percent or more of the employees performing the administra-
27 tive and support functions resulting from or related to the qualifying
28 uses of such equipment are located in this state or (ii) the average
29 number of employees that perform the administrative and support func-
30 tions resulting from or related to the qualifying uses of such equipment
31 and are located in this state during the taxable year for which the
32 credit is claimed is equal to or greater than ninety-five percent of the
33 average number of employees that perform these functions and are located
34 in this state during the thirty-six months immediately preceding the
35 year for which the credit is claimed, or (iii) the number of employees
36 located in this state during the taxable year for which the credit is
37 claimed is equal to or greater than ninety percent of the number of
38 employees located in this state on December thirty-first, nineteen
39 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
40 er in nineteen hundred ninety-eight, the last day of its first taxable
41 year ending after December thirty-first, nineteen hundred ninety-eight.
42 If the taxpayer becomes subject to tax in this state after the taxable
43 year beginning in nineteen hundred ninety-eight, then the taxpayer is
44 not required to satisfy the employment test provided in the preceding
45 sentence of this subparagraph for its first taxable year. For purposes
46 of clause (iii) of this subparagraph the employment test will be based
47 on the number of employees located in this state on the last day of the
48 first taxable year the taxpayer is subject to tax in this state. If the
49 uses of the property must be aggregated to determine whether the proper-
50 ty is principally used in qualifying uses, then either each affiliate
51 using the property must satisfy this employment test or this employment
52 test must be satisfied through the aggregation of the employees of the
53 taxpayer, its affiliated regulated broker, dealer, and registered
54 investment adviser using the property. For purposes of clause (A) of
55 this subparagraph, tangible personal property and other tangible proper-
56 ty shall not include property principally used by the taxpayer in the

1 production or distribution of electricity, natural gas after extraction
2 from wells, steam, or water delivered through pipes and mains.

3 § 5. Subparagraph (A) of paragraph 2 of subsection (a) of section 606
4 of the tax law, as amended by section 3 of part P of chapter 59 of the
5 laws of 2017, is amended to read as follows:

6 (A) A credit shall be allowed under this subsection with respect to
7 tangible personal property and other tangible property, including build-
8 ings and structural components of buildings, which are: depreciable
9 pursuant to section one hundred sixty-seven of the internal revenue
10 code, have a useful life of four years or more, are acquired by purchase
11 as defined in section one hundred seventy-nine (d) of the internal
12 revenue code, have a situs in this state and are (i) principally used by
13 the taxpayer in the production of goods by manufacturing, processing,
14 assembling, refining, mining, extracting, farming, agriculture, horti-
15 culture, floriculture, viticulture ~~[or]~~ commercial fishing, or eligi-
16 ble business enterprise as determined by the commissioner of housing and
17 community renewal pursuant to section nine hundred eighty-five of the
18 general municipal law, (ii) industrial waste treatment facilities or air
19 pollution control facilities, used in the taxpayer's trade or business,
20 (iii) research and development property, (iv) principally used in the
21 ordinary course of the taxpayer's trade or business as a broker or deal-
22 er in connection with the purchase or sale (which shall include but not
23 be limited to the issuance, entering into, assumption, offset, assign-
24 ment, termination, or transfer) of stocks, bonds or other securities as
25 defined in section four hundred seventy-five (c)(2) of the Internal
26 Revenue Code, or of commodities as defined in section 475(e) of the
27 Internal Revenue Code, (v) principally used in the ordinary course of
28 the taxpayer's trade or business of providing investment advisory
29 services for a regulated investment company as defined in section eight
30 hundred fifty-one of the Internal Revenue Code, or lending, loan
31 arrangement or loan origination services to customers in connection with
32 the purchase or sale (which shall include but not be limited to the
33 issuance, entering into, assumption, offset, assignment, termination, or
34 transfer) of securities as defined in section four hundred seventy-five
35 (c)(2) of the Internal Revenue Code, or (vi) principally used as a qual-
36 ified film production facility including qualified film production
37 facilities having a situs in an empire zone designated as such pursuant
38 to article eighteen-B of the general municipal law, where the taxpayer
39 is providing three or more services to any qualified film production
40 company using the facility, including such services as a studio lighting
41 grid, lighting and grip equipment, multi-line phone service, broadband
42 information technology access, industrial scale electrical capacity,
43 food services, security services, and heating, ventilation and air
44 conditioning. For purposes of clauses (iv) and (v) of this subparagraph,
45 property purchased by a taxpayer affiliated with a regulated broker,
46 dealer, or registered investment adviser is allowed a credit under this
47 subsection if the property is used by its affiliated regulated broker,
48 dealer or registered investment adviser in accordance with this
49 subsection. For purposes of determining if the property is principally
50 used in qualifying uses, the uses by the taxpayer described in clauses
51 (iv) and (v) of this subparagraph may be aggregated. In addition, the
52 uses by the taxpayer, its affiliated regulated broker, dealer and regis-
53 tered investment adviser under either or both of those clauses may be
54 aggregated. Provided, however, a taxpayer shall not be allowed the cred-
55 it provided by clauses (iv) and (v) of this subparagraph unless (I)
56 eighty percent or more of the employees performing the administrative

1 and support functions resulting from or related to the qualifying uses
2 of such equipment are located in this state, or (II) the average number
3 of employees that perform the administrative and support functions
4 resulting from or related to the qualifying uses of such equipment and
5 are located in this state during the taxable year for which the credit
6 is claimed is equal to or greater than ninety-five percent of the aver-
7 age number of employees that perform these functions and are located in
8 this state during the thirty-six months immediately preceding the year
9 for which the credit is claimed, or (III) the number of employees
10 located in this state during the taxable year for which the credit is
11 claimed is equal to or greater than ninety percent of the number of
12 employees located in this state on December thirty-first, nineteen
13 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
14 er in nineteen hundred ninety-eight, the last day of its first taxable
15 year ending after December thirty-first, nineteen hundred ninety-eight.
16 If the taxpayer becomes subject to tax in this state after the taxable
17 year beginning in nineteen hundred ninety-eight, then the taxpayer is
18 not required to satisfy the employment test provided in the preceding
19 sentence of this subparagraph for its first taxable year. For the
20 purposes of clause (III) of this subparagraph the employment test will
21 be based on the number of employees located in this state on the last
22 day of the first taxable year the taxpayer is subject to tax in this
23 state. If the uses of the property must be aggregated to determine
24 whether the property is principally used in qualifying uses, then either
25 each affiliate using the property must satisfy this employment test or
26 this employment test must be satisfied through the aggregation of the
27 employees of the taxpayer, its affiliated regulated broker, dealer, and
28 registered investment adviser using the property. For purposes of clause
29 (i) of this subparagraph, tangible personal property and other tangible
30 property shall not include property principally used by the taxpayer in
31 the production or distribution of electricity, natural gas after
32 extraction from wells, steam, or water delivered through pipes and
33 mains.

34 § 6. The real property tax law is amended by adding a new section
35 420-d to read as follows:

36 § 420-d. Real property tax abatements. Newly constructed or substan-
37 tially rehabilitated residential dwellings located within housing oppor-
38 tunity zones designated pursuant to article nineteen-AA of the general
39 municipal law shall be exempt from all taxes imposed by a municipal
40 corporation, including those imposed by a school district, other than
41 assessments for local improvements, during construction or rehabili-
42 tation, so long as such dwelling is used for residential unit purposes
43 for a period not to exceed ten years in the aggregate after the taxable
44 status date immediately following the completion thereof, calculated not
45 to exceed the following exemptions: two years of full exemption followed
46 by two years of exemption from eighty percent of such taxation, followed
47 by three years of exemption from sixty percent of such taxation,
48 followed by two years of exemption from forty percent of such taxation,
49 followed by two years of exemption from twenty percent of such taxation;
50 provided that taxes shall be paid during any such period at least in the
51 amount of the taxes paid on such land and improvements thereon during
52 the tax year preceding the commencement of such construction or rehabili-
53 itation and that the exemption from taxes shall not be availed of
54 concurrently under any other law.

55 § 7. This act shall take effect on the first of October next succeed-
56 ing the date on which it shall have become a law.