STATE OF NEW YORK

8190--A

IN SENATE

April 13, 2020

Introduced by Sens. SALAZAR, JACKSON, MYRIE, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to establish the Emergency Coronavirus Affordable Housing Preservation Act of 2020

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

Section 1. This act shall be known and may be cited as the "Emergency Coronavirus Affordable Housing Preservation Act of 2020".

§ 2. Legislative findings. The legislature hereby finds that a serious public emergency exists in the state of New York due to the impact of the global outbreak of novel coronavirus, COVID-19, which as of the date of this legislation, created destabilized housing, loss of employment and/or income, closure of businesses and/or schools, and greatly exacerbated financial insecurity in the state of New York. The legislature further finds that it is currently impossible to accurately assess the full scope, duration, and severity of impact this public emergency has and will have on the residents of New York and that, in response to this crisis, the executive declared a 'Disaster Emergency' which has put extraordinary constraints on individuals, families, homeowners, small businesses, not-for-profits, and local/state/federal agencies. The legislature declares that it is both in the public interest and the responsibility of government to provide and secure federal and/or state emergency funding to ensure small businesses, public housing entities, nonprofits, families, and individuals, unable to afford housing and/or necessary expenses as a result of lost income related to public health emergencies, such as the novel coronavirus, COVID-19, outbreak, not be encumbered with severe financial burden and that, consistent with articles 17 and 18 of the state constitution, it is therefore incumbent on the legislature and the executive to implement protections so as to reduce the harm to New York residents and ensure safe, decent, sanitary,

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

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affordable housing and financial stability during the novel coronavirus, COVID-19, crisis and all other public emergencies.

§ 3. Definitions. (a) "Residential tenant" shall have the same meaning as in paragraph (a) of subdivision 1 of section 235-f of the real property law, those who otherwise pay for the use and occupancy of a residential dwelling, or occupants as defined by paragraph (b) of subdivision 1 of section 235-f of the real property law.

(b) "Commercial small business tenant" shall mean a small business, as defined in section 131 of the economic development law, lawfully occupying a covered property pursuant to a lease or other rental agreement.

(c) "Small homeowner" shall mean an owner of a dwelling with 6 or fewer units where such owner also resides as a primary residence.

(d) "Affordable housing operator" shall mean a not-for-profit entity as defined in the not-for-profit corporation law or a housing development fund company as defined in section 572 of the private housing finance law that owns and operates a housing project for persons of low-income.

(e) "Residential cooperative" shall mean any not-for-profit corporation or housing development fund company owning and operating any housing project, of any size, for persons of low-income as defined in section 573 of the private housing finance law or any corporation or entity owning and operating a residential cooperative with 10 or fewer units.

§ 4. Abatement of rent in the case of residential and commercial small business tenants complying or formerly employed by small business complying with COVID-19 orders and tenants who are employees of small businesses; jurisdiction; evidentiary presumptions; effect of abatement; offset of abatement by owners. (a) Notwithstanding any other provision of law, rule or regulation to the contrary, for any residential tenant or commercial small business tenant in the state that has lost income as a result of such residential tenant's, or such tenant's employer's, compliance with government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, or as a result of the shutdown of the industry in which such residential tenant or commercial small business tenant was working, operating, or employed as a result of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, including the definition of "essential" and "non-essential" work, or as a result of the closure of the premises when the premises are such commercial small business tenant's place of business in compliance with government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, no rent shall be recovered by an owner of any premises used by such tenant thereof for human habitation, or for the operation of the small business, for the entire period of such compliance, which period shall run from March 20, 2020 until the date when the governor shall specify, in an executive order, that the prohibition on enforcement of either an eviction of any tenant, residential or commercial, imposed by executive order 202.8, shall have expired, but in no event shall such period be less than ninety days from March 20, 2020.

(b) (i) In the case of residential tenants, both the state division of housing and community renewal as well as any court of competent jurisdiction, which shall include the New York City Civil Court and any city, village, or town court within a summary proceeding under article 7 of the real property actions and proceedings law, shall have jurisdiction to determine rental abatements as provided herein. The state division of housing and community renewal shall issue regulations to effectuate this

section. The regulations issued pursuant to this paragraph shall include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

(ii) In the case of commercial small business tenants, any court of competent jurisdiction, which shall include the New York City Civil Court and any city, village, or town court within a summary proceeding under article 7 of the real property actions and proceedings law, as well as the comptroller in a municipality having a comptroller, or in a municipality having no comptroller, then the chief fiscal officer of such municipality, except that in the city of New York, then specifically the department of small business services, shall have jurisdiction to determine rental abatements as provided herein. Said comptroller, chief fiscal officer, or, in the city of New York, the department of small business services, such shall issue regulations to effectuate this section. The regulations issued pursuant to this paragraph shall include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

(c) For the purpose of demonstrating that such residential tenant has lost income as a result of such residential tenant's, or such tenant's employer's, compliance with government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, a rebuttable presumption that such residential tenant has lost income shall be created if the residential tenant establishes through testimony or documentary evidence that the tenant has lost hourly income pay, or was terminated, laid-off, subject to a reduction in work hours, or terminated from an independent contract job or "gig" employment within 2 weeks of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. For the purpose of this subdivision, the 2 weeks shall run from March 7, 2020.

(d) For the purpose of demonstrating that such commercial small business tenant has lost income as a result of such commercial small business tenant's compliance with government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, a rebuttable presumption that such commercial small business tenant has lost income shall be created if such commercial small business tenant establishes through testimony or documentary evidence that such commercial small business tenant closed the premises when the premises are such commercial small business' place of business within 2 weeks of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. For the purpose of this subdivision, the 2 weeks shall run from March 7, 2020.

(e) Any abatement of rent provided to a residential or commercial small business tenant hereunder shall have the same effect as a cancellation of the rental debt and any claims related thereto for the purpose of legal collection, enforcement, and reporting to a credit reporting or tenant screening bureau, and shall render any person who seeks to collect, enforce, or report to a credit reporting bureau or tenant screening bureau such abated rent to all like penalties, sanctions, and liabilities under the law for the unlawful collection, enforcement, or reporting of debt.

(f) At such owner's election, any owner of premises subject to any orders awarding abatements of rent issued by the state department of

housing and community renewal or other department or agency designated by the chief executive of a city with a population of more than one million or county, city, town, or village, or to any judgments issued by a court of competent jurisdiction shall be entitled to recover the total dollar amount of all abatements issued hereunder either: (i) as a reduction in the owner's real property tax payment by deducting from the amount due in any quarter or period an amount not in excess of 10% of the total abatement dollar amount from each payment coming due until the total abatement amount is deducted; or

(ii) a withholding of any mortgage or construction loan principal payments, mortgage or construction loan interest payments, or mortgage or construction loan extension fee payments due and owing to the state or any political subdivision thereof until the total abatement amount is repaid. The department of taxation and finance and all departments and agencies specified in the private housing finance law, including the supervising agency as defined in article 1 of the private housing finance law, shall issue regulations establishing an application procedure for an owner to elect a method of abatement offsetting. The regulations issued pursuant to this paragraph shall include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

§ 5. Residential mortgage relief for individuals with financial hardship. The provisions of executive order 202.9 of 2020, dated March 21, 2020, relating to a modification of subdivision two of section 39 of the banking law to provide that any bank which is subject to the jurisdiction of the department of financial services shall be deemed to be engaging in an unsafe and unsound business practice if it does not grant a forbearance to any person or business who has a financial hardship as a result of the novel coronavirus, COVID-19, pandemic for a period of 90 days is hereby enacted, in its entirety, including with the directive that the department of financial services promulgate regulations to effectuate the contents of such directive. The regulations issued pursuant to this paragraph shall include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

§ 6. Assistance to small homeowners losing rental income as a result of the novel coronavirus, COVID-19, public health crisis. (a) Except as modified in this section, for the purpose of ensuring that small homeowners possess sufficient funds to continue operating safe, decent, and sanitary housing, for themselves and for tenants, during the novel coronavirus, COVID-19, public health crisis, any small homeowner who has lost 10% or greater of rental income as a result of financial hardship to such small homeowner's tenants shall be entitled to a payment of the total amount of lost rental income if the small homeowner can establish that the rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such small homeowner can demonstrate the loss of 10% or more of rental income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. In addition to those small homeowners who can demonstrate the loss of 10% or more of their rental income, any small homeowner who can demonstrate through testimony or documentary evidence that such small homeowner has lost an

amount of rental income less than 10%, but which is sufficient to have caused financial hardship to the small homeowner by rendering such small homeowner incapable of covering necessary expenses related to the property, shall also be entitled to a payment of the total amount of lost rental income if the small homeowner can establish that the rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such small homeowner can demonstrate the loss of such income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. For the purpose of determining whether the rebuttable presumption created herein shall apply, the month shall run from March 7, 2020 until April 20, 2020.

(b) Any payment made to a small homeowner under this provision shall be monthly, paid on or before May 1, 2020 and such payment shall continue on a monthly basis until and through the date when the governor shall specify, in an executive order, that the prohibition on enforcement of either an eviction of any tenant, residential or commercial, imposed by executive order 202.8, shall have expired, but in no event shall such period be less than 90 days from March 20, 2020. The first payment on May 1, 2020 shall cover the period of March 20 through April 30, 2020. Such shall also include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language

(c) The supervising agency, as defined in article 1 of the private housing finance law, shall issue regulations establishing an application procedure for a small homeowner to seek such lost rental income relief. Such regulations shall provide that as a condition of such relief payments, a small homeowner shall agree and shall be obligated, through executing an instrument in a form specified in any regulations issued hereunder, to provide all tenants residing in the dwelling with a renewal lease of at least 1 year and at the amount of rent actually charged and collected 6 months prior to the application, and such regulations shall further provide that small homeowners shall not be eligible for the relief provided herein for rental income imputable to any illegal unit or for rental income imputable to any unit containing uncorrected, as of the time of the application, immediately hazardous violations of a state or local housing or building code that existed prior to March 1, 2020. Such regulations shall also include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

(d) The assistance provided under this section shall primarily be funded by any grants or funding available or repurposed by the state in relation to:

(i) the novel coronavirus, COVID-19, public health crisis;

(ii) any federal or state funds available in response to a national and/or state emergency order;

(iii) any funds received from federal programs in relation to public health emergencies;

(iv) the novel coronavirus, COVID-19, public health emergency allowing for the protection of low-income, marginalized communities, public housing programs and economic development, and the preservation and conservation of housing;

(v) any funds available to the state under the federal "Coronavirus Aid, Relief, and Economic Security Act" or the CARES Act; and/or

(vi) any federal or state emergency relief funds available to the state.

§ 7. Assistance for affordable housing operators losing rental income as a result of the novel coronavirus, COVID-19, public health crisis.

(a) Except as modified in this section, for the purpose of ensuring that affordable housing operators possess sufficient funds to continue operating safe, decent, and sanitary housing for vulnerable low-income populations during the novel coronavirus, COVID-19, public health crisis, any affordable housing operator that has lost 10% or greater of rental income as a result of financial hardship to such affordable housing operator's tenants shall be entitled to a payment of the total amount of lost rental income if the affordable housing operator can establish that the rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such affordable housing operator can demonstrate the loss of 10% or more of rental income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. In addition to those affordable housing operators who can demonstrate the loss of 10% or more of their rental income, any affordable housing operator who can demonstrate through testimony or documentary evidence that such affordable housing operator has lost an amount of rental income less than 10%, but which is sufficient to have caused financial hardship to the affordable housing operator by rendering such affordable housing operator incapable of covering necessary expenses related to the property, shall also be entitled to a payment of the total amount of lost rental income if the affordable housing operator can establish that the rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such affordable housing operator can demonstrate the loss of such income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. For the purpose of determining whether the rebuttable presumption created herein shall apply, the month shall be deemed to have begun on March 7, 2020 and shall run until April 20, 2020.

(b) Any payment made to an affordable housing operator under this provision shall be monthly, paid on May 1, 2020, and such payment shall continue on a monthly basis until and through the date when the governor shall specify, in an executive order, that the prohibition on enforcement of either an eviction of any tenant, residential or commercial, imposed by executive order 202.8, shall have expired, but in no event shall such period be less than 90 days from March 20, 2020. The first payment on May 1, 2020 shall cover the period of March 20 through April 30, 2020.

(c) All departments and agencies specified in the private housing finance law, including the supervising agency as defined in article 1 of the private housing finance law, shall issue regulations establishing an application procedure for an affordable housing operator seeking such lost rental income relief. Such regulations shall provide that, as a condition of such relief, the affordable housing operator shall enter into a regulatory agreement, as defined in section 576 of the private housing finance law, with the executive unless such affordable housing operator is already subject to a regulatory agreement as defined there-

in, and such regulations shall further provide that affordable housing operators shall not be eligible for the relief provided herein for rental income imputable to any illegal unit or for rental income imputable to a unit containing uncorrected, as of the time of the application, immediately hazardous violations of a state or local housing or building code that existed prior to March 1, 2020. Such regulations shall also include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

(d) The assistance provided under this section shall primarily be funded by any grants or funding available or repurposed by the state in relation to:

(i) the novel coronavirus, COVID-19, public health crisis;

(ii) any federal or state funds available in response to a national and/or state emergency order;

(iii) any funds received from federal programs in relation to public health emergencies;

(iv) the novel coronavirus, COVID-19, public health emergency allowing for the protection of low-income, marginalized communities, public housing programs and economic development, and the preservation and conservation of housing;

(v) any funds available to the state under the federal "Coronavirus Aid, Relief, and Economic Security Act" or the CARES Act; and/or

(vi) any federal or state emergency relief funds available to the state.

§ 8. Assistance to residential housing cooperatives losing maintenance and rental income as a result of the novel coronavirus, COVID-19, public health crisis. (a) Except as modified in this section, for the purpose of ensuring that residential housing cooperatives possess sufficient funds to continue operating safe, decent, and sanitary multifamily housing during the novel coronavirus, COVID-19, public health crisis, any residential housing cooperatives that have lost 10% or greater of maintenance or rental income as a result of financial hardship to such residential housing cooperative's tenants or shareholders shall be entitled to a payment of the total amount of lost maintenance or rental income if the residential housing cooperative can establish that the maintenance or rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such residential housing cooperative can demonstrate the loss of 10% or more of maintenance or rental income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. In addition to those residential housing cooperatives who can demonstrate the loss of 10% or more of their rental income, any residential housing cooperative which can demonstrate through testimony or documentary evidence that such residential housing cooperative has lost an amount of maintenance or rental income less than 10%, but which is sufficient to have caused financial hardship to the residential housing cooperative by rendering such residential housing cooperative incapable of covering necessary expenses related to the property, shall also be entitled to a payment of the total amount of lost maintenance or rental income if the residential housing cooperative can establish that the maintenance or rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such residen-

tial housing cooperative can demonstrate the loss of such maintenance or rental income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. For the purpose of determining whether the rebuttable presumption created herein shall apply, the month shall run from March 7, 2020 until April 20, 2020.

(b) Any payment made to a residential housing cooperative under this provision shall be monthly, paid on or before May 1, 2020 and such payment shall continue on a monthly basis until and through the date when the governor shall specify, in an executive order, that the prohibition on enforcement of an eviction of any tenant, residential or commercial, imposed by executive order 202.8, shall have expired, but in no event shall such period be less than 90 days from March 20, 2020.

(c) All departments and agencies specified in the private housing finance law as supervising housing development fund companies, as well as the supervising agency as defined in article 1 of the private housing finance law, shall issue regulations establishing an application procedure for a residential housing cooperative seeking assistance with such lost maintenance and rental income relief. Such regulations shall provide that as a condition of such assistance payments, a residential housing cooperative shall agree and shall be obligated, through executing an instrument in a form specified in the regulations issued hereunder, to provide any tenants residing in the housing cooperative with a renewal lease of at least 1 year, at the same rental amount actually charged and collected 6 months prior to the application for relief. Such regulations shall further provide that any rental housing cooperative shall not be eligible for the relief provided herein for rental or maintenance income imputable to any illegal unit or unit occupied in violation of the cooperative's bylaws or for rental income imputable to a unit containing uncorrected, as of the time of the application, immediately hazardous violations of a state or local housing or building code that existed prior to March 1, 2020 and which are the housing cooperative's legal duty to remedy. Such regulations shall also include provisions designed to ensure that assistance will be provided by the relevant agencies to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

(d) The assistance provided under this section shall primarily be funded by any grants or funding available or repurposed by the state in relation to:

(i) the novel coronavirus, COVID-19, public health crisis;

(ii) any federal or state funds available in response to a national and/or state emergency order;

(iii) any funds received from federal programs in relation to public health emergencies;

(iv) the novel coronavirus, COVID-19, public health emergency allowing for the protection of low-income, marginalized communities, public housing programs and economic development, and the preservation and conservation of housing;

(v) any funds available to the state under the federal "Coronavirus Aid, Relief, and Economic Security Act" or the CARES Act; and/or

(vi) any federal or state emergency relief funds available to the state.

§ 9. Regulatory relief for affordable housing operators and residential housing cooperatives providing housing during the novel coronavirus, COVID-19, public health crisis. (a) Notwithstanding any contrary

provision of law, rule, regulation or provision of any regulatory or other agreement by and between an affordable housing operator, residential housing cooperative, or any affiliate or subsidiary of an affordable housing operator or residential housing cooperative, as one party, and the department or agency of the state or any political subdivision of the state, as another party, affordable housing operators and residential housing cooperatives shall: (i) have the right to use or apply any operating account reserves toward or for building or housing project operations or the satisfaction of any debts or obligations arising from financial hardship caused by the novel coronavirus, COVID-19, public health crisis without any penalty or sanction otherwise provided for in such law, rule, regulation, or provision of a regulatory or other agreement; and (ii) the right to withhold any mortgage or construction loan principal payments, mortgage or construction loan interest payments, or mortgage or construction loan extension fee payments due and owing to the state or any political subdivision thereof and apply such mortgage interest payments to housing project operations or the satisfaction of any debts or obligations arising from financial hardship caused by the novel coronavirus, COVID-19, public health crisis or to the replenishment of any operating account reserves.

(b) Notwithstanding any contrary provision of law, rule, regulation or provision of any regulatory or other agreement by and between any corporation, not-for-profit corporation, community benefit corporation, local community development corporation, as one party, and the department or agency of the state or any political subdivision of the state, as another party, relating to the provision of funding to any affordable housing operator or residential housing cooperative, whether as a mortgage or as any supportive fund, such community benefit corporation or local community development shall, upon request of such affordable housing operator or residential housing cooperative, grant a forbearance to such affordable housing operator or residential housing cooperative who has a financial hardship as a result of the novel coronavirus, COVID-19, pandemic for a period of at least 90 days, which period shall be extended if the governor extends the period of the mortgage forbearance as provided in section five of this act.

(c) All departments and agencies specified in the private housing finance law, including the supervising agency as defined in article 1 of the private housing finance law, shall issue regulations to effectuate the provisions of this section.

§ 10. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a 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 part 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.

§ 11. This act shall take effect immediately.