

# STATE OF NEW YORK

9872

## IN ASSEMBLY

April 19, 2022

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

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

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

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

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

### ARTICLE 32

#### ACCESSORY DWELLING UNIT FORGIVABLE LOAN PROGRAM

#### Section 1290. Legislative findings and purpose.

##### 1291. Definitions.

##### 1292. Accessory dwelling unit forgivable loan program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The division shall establish a program to provide technical assistance to all homeowners seeking to create an accessory dwelling unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 § 6. This act shall take effect immediately.