STATE OF NEW YORK

2731

2021-2022 Regular Sessions

IN SENATE

January 22, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law and the local finance law, in relation to affordable housing in cities having a population of one million or more

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

Section 1. The private housing finance law is amended by adding a new article 31 to read as follows:

ARTICLE XXXI

AFFORDABILITY PLUS PROGRAM

Section 1280. Short title.

1281. Statement of legislative findings and purpose.

1282. Definitions.

1283. Loans and grants.

1284. Rents.

1285. Rules; enforcement.

1286. Severability.

1287. Reporting.

§ 1280. Short title. This article shall be known and may be cited as the "affordability plus program".

§ 1281. Statement of legislative findings and purpose. The legislature hereby finds and declares that there is, in cities having a population of one million or more, a seriously inadequate supply of safe and sanitary housing accommodations within the financial reach of families and persons of low income. This condition is contrary to the public interest and threatens the health, safety, welfare, comfort and security of the people of such cities. The legislature further finds and declares that the ordinary operations of private enterprise cannot provide an adequate supply of safe and sanitary housing accommodations at rental and sale

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

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prices that families and persons of low income can afford. It is the purpose of this act to provide loans and grants to increase the supply of housing accommodations for families and persons of low income, and thereby improve the quality of life for all the people of such cities.

§ 1282. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Agency" shall mean a department of housing preservation and development in a city having a population of one million or more.

2. "Housing accommodations" shall mean: (a) a private or multiple dwelling, or any other structure containing dwelling units, rooming units or sleeping accommodations, together with the land on which such structure is situated; (b) any real property to be converted to such user; or (c) all or a portion of the dwelling units, rooming units or sleeping accommodations therein.

3. "Owner" shall mean a person having record or beneficial ownership of real property or a lessee of real property having an unexpired term of at least thirty years.

4. "Regulatory agreement" shall mean a written agreement with or approved by a city having a population of one million or more that requires the provision of housing accommodations for families and persons of low income, is entered into on or after the effective date of this article, specifically provides that it is entered into pursuant to this article, is recorded against one or more parcels of real property, and binds the owner of such real property and its successors and assigns. A regulatory agreement may include such other terms and conditions as such city shall determine.

5. "Rent stabilization" shall mean, collectively, the rent stabilization law of nineteen hundred sixty-nine, the rent stabilization code, and the emergency tenant protection act of nineteen hundred seventy-four, all as in effect as of the effective date of this article or as amended thereafter, together with any successor statutes or regulations addressing substantially the same subject matter.

§ 1283. Loans and grants. 1. Notwithstanding the provisions of any general, special or local law, a city having a population of one million or more is authorized to make loans or grants to the owner of any real property for the purpose of: (a) construction, rehabilitation, conversion, acquisition or refinancing of housing accommodations; (b) providing site improvements, including, but not limited to, water and sewer facilities, sidewalks, landscaping, the curing of problems caused by abnormal site conditions, excavation and construction of footings and foundations and other improvements associated with the provision of infrastructure for housing accommodations; or (c) providing for other costs of developing housing accommodations.

2. Any loan made in accordance with this section shall be evidenced by a note and may be secured by: (a) a mortgage upon the interest of the owner in the real property assisted; (b) in the case of a condominium, a mortgage upon each of the housing accommodations assisted by such loan or; (c) in the case of a cooperative housing corporation, a lien upon the economic interest in such corporation of each tenant-shareholder assisted by such loan, or a mortgage upon the real property assisted, or both such lien and such mortgage. Any such mortgage may be consolidated with a municipally-aided mortgage that encumbers the real property at the time of the making of the loan pursuant to this section. For purposes of this article, the term "mortgage" shall include any pledge or assignment of shares, or assignment of a proprietary lease, in a cooperative housing corporation where such pledge or assignment is

intended as security for the performance of an obligation and imposes a lien on or affects title to such shares or such proprietary lease.

3. The repayment of any loan made in accordance with this section shall be made in such manner as may be provided in the note and any mortgage in connection with such loan. Such note and mortgage may contain such terms and conditions as the city may deem necessary or desirable to effectuate the purposes and provisions of this article. Such terms and conditions may include, but shall not be limited to, provisions concerning: (a) the repayment of the loan; (b) the interest, if any, thereon; (c) the charges, if any, in connection therewith; and (d) the prepayment of the principal of the loan. Such note and mortgage may provide that all or a portion of the principal of the loan shall automatically be reduced to zero over a period of continuous compliance by the owner with a regulatory agreement and upon the satisfaction of any additional conditions specified therein. Notwithstanding such provision as contained in the note and mortgage, all or a portion of the principal of the loan shall be reduced to zero only if, prior to or simultaneously with delivery of such note and mortgage, the agency made a written determination that such reduction would be necessary to ensure the continued affordability or economic viability of the housing accommodations assisted by such loan. Such written determination shall document the basis upon which the loan was determined to be eligible for evaporation.

4. The city shall require the owner of any real property that is the subject of a loan or grant pursuant to this section to execute and record a regulatory agreement having a term commencing not later than the date of such loan or grant. The regulatory agreement shall provide that the owner shall rent or sell all housing accommodations required to be occupied by families and persons of low income at rental or sales prices that do not exceed, averaging all housing accommodations required to be occupied by families and persons of low income by the regulatory agreement, rental or sales prices that are affordable to households earning one hundred twenty percent of the area median income, adjusted for household size.

5. The city shall not make any loan or grant pursuant to this section unless the agency has made a written determination, which shall be stated or referenced in the regulatory agreement, that such loan or grant is necessary to ensure the affordability or economic viability of the housing accommodations in accordance with the terms of the regulatory agreement.

6. At the discretion of the agency, a mortgage securing a loan made pursuant to this section may be exempt from the tax on mortgages imposed by article eleven of the tax law and the tax on mortgages imposed by chapter twenty-six of title eleven of the administrative code of the city of New York.

7. At the discretion of the agency, any transfer of real property made in connection with a loan or grant made pursuant to this section may be exempt from the real estate transfer tax imposed by article thirty-one of the tax law and the real property transfer tax imposed by chapter twenty-one of title eleven of the administrative code of the city of New York.

8. The agency may make provision, either in the mortgage or by separate agreement, for the performance of such loan servicing functions, including functions related to construction lending, as may generally be performed by an institutional lender. The agency may act in such capacity or appoint or consent to the appointment of a financial institution

to act in such capacity on behalf of the agency. The agency is authorized to pay a reasonable and customary fee to such financial institution for the performance of such services.

§ 1284. Rents. Notwithstanding the provisions of rent stabilization or the local emergency housing rent control act, or any regulation or local law enacted pursuant thereto:

1. The regulatory agreement shall provide that all housing accommodations required to be occupied by families and persons of low income shall be subject to rent stabilization as of the effective date of the regulatory agreement; provided, however, that the agency may exempt from the requirements of this section any housing accommodations that are: (a) located in a structure containing fewer than six dwelling units or rooming units; (b) to be occupied on a transitional basis by persons who are formerly homeless or have special needs; (c) subject to any law providing for the regulation of rents by a governmental agency or instrumentality; or (d) to be occupied as homeownership, rather than rental, housing accommodations.

2. Except as otherwise provided in subdivision one of this section, if any housing accommodations required to be occupied by families and persons of low income are not subject to rent stabilization as of the effective date of the regulatory agreement, the agency shall establish the initial rents for such housing accommodations as of such date.

3. Upon completion of the construction or rehabilitation of a housing accommodation which is assisted by a loan or grant made by a city pursuant to section twelve hundred eighty-three of this article, the agency may establish a new initial rent for each dwelling unit subject to rent stabilization within the housing accommodation pursuant to subdivision one of this section or otherwise. Prior to the making of a rehabilitation loan or grant pursuant to this article, the agency shall cause each tenant in occupancy of a dwelling unit for which the agency intends to establish a new initial rent to be notified of and have an opportunity to comment on the contemplated rehabilitation. Such notification shall advise such tenants of the approximate expected initial rent. Such notification and opportunity to comment shall be provided before the rehabilitation and again after the rehabilitation is completed and prior to the establishment of the new initial rents. A representative of the agency shall meet or offer to meet with all tenants in occupancy of dwelling units affected by the provisions of this subdivision at least once before the rehabilitation.

§ 1285. Rules; enforcement. 1. The agency may promulgate rules to carry out the provisions of this article, and may require a filing fee in an amount equal to one thousand dollars per dwelling unit, or such lesser amount as may be provided by such rules, in connection with any application for a loan or grant pursuant to this article.

2. The agency shall have the power to: (a) subpoena, require the attendance of and examine and take testimony under oath of such persons as it may deem necessary in order to monitor and enforce compliance with the regulatory agreement; and (b) subpoena and require the production of books, accounts, papers, documents and other evidence related to such monitoring and enforcement.

§ 1286. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly

involved in the controversy in which such judgment shall have been rendered.

§ 1287. Reporting. On or before September thirtieth of each year, beginning in two thousand twenty-two, the agency shall submit a report to the temporary president of the senate and the speaker of the assembly on the housing production activity of the affordability plus program for the previous city fiscal year.

§ 2. Subdivision a of section 11.00 of the local finance law is amended by adding a new paragraph 41-f to read as follows:

41-f. Affordability plus program. The making of loans or grants, pursuant to article thirty-one of the private housing finance law, thirty years; improvements associated with the construction, rehabilitation, conversion, acquisition or refinancing of housing accommodations, pursuant to article thirty-one of the private housing finance law, thirty years.

§ 3. This act shall take effect immediately.