STATE OF NEW YORK

2804

2021-2022 Regular Sessions

IN SENATE

January 25, 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 public housing law, in relation to establishing the housing access voucher program

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

Section 1. The public housing law is amended by adding a new article 14 to read as follows:

ARTICLE 14

HOUSING ACCESS VOUCHER PROGRAM

Section 600. Legislative findings.
601. Definitions.
602. Housing access voucher program.
603. Eligibility.
604. Funding allocation and distribution.
605. Payment of housing vouchers.
606. Leases and tenancy.
607. Rental obligation.
608. Monthly assistance payment.
609. Inspection of units by public housing agencies.
610. Rent.
611. Vacated units.
612. Leasing of units owned by a public housing agency.
613. Verification of income.
614. Division of an assisted family.
615. Maintenance of effort.
616. Vouchers statewide.
617. Applicable codes.
618. Housing choice.

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

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§ 600. Legislative findings. The legislature finds that it is in the public interest and an obligation of the state to ensure that individuals and families are not rendered homeless because of an inability to pay the cost of housing, and that the state should aid individuals and families who are homeless or face an imminent loss of housing in obtaining and maintaining suitable permanent housing in accordance with the provisions of this article.

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

1. "homeless" means lacking a fixed, regular, and adequate nighttime residence; having a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, campground, or other place not meant for human habitation; living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by federal, state or local government programs for low-income individuals or by charitable organizations, congregate shelters, or transitional housing); exiting an institution where an individual or family has resided and lacking a regular fixed and adequate nighttime residence upon release or discharge; being a homeless family with children or unaccompanied youth defined as homeless under federal statute; having experienced a long-term period without living independently in permanent housing or having experienced persistent instability as measured by frequent moves and being reasonably expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, multiple barriers to employment, or other dangerous or life-threatening conditions, including conditions that relate to violence against an individual or a family member.

2. "imminent loss of housing" means having received a verified rent demand or a petition for eviction; having received a court order resulting from an eviction action that notifies the individual or family that they must leave their housing; facing loss of housing due to hazardous conditions, including but not limited to asbestos, lead exposure, mold, and radon; having a primary nighttime residence that is a room in a hotel or motel and lacking the resources necessary to stay; facing loss of the primary nighttime residence, which may include living in the home of another household, where the owner or renter of the housing will not allow the individual or family to stay, provided further, that an assertion from an individual or family member alleging such loss of housing or homelessness shall be sufficient to establish eligibility; or fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, human trafficking or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, provided further that an assertion from an individual or family member alleging such abuse and loss of housing shall be sufficient to establish eligibility.

3. "public housing agency" means any county, municipality, or other governmental entity or public body that is authorized to administer any public housing program (or an agency or instrumentality of such an entity), and any other public or private non-profit entity that administers any other public housing program or assistance.

4. "family" means a group of persons residing together. Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family) or the remaining member of a tenant family. The commissioner shall have the discretion to determine if any other group of persons qualifies as a family.

5. "individual" means a single person.

6. "owner" means any private person or any entity, including a cooperative, an agency of the federal government, or a public housing agency, having the legal right to lease or sublease dwelling units.

7. "dwelling unit" means a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

8. "income" means income from all sources of each member of the household, including all wages, tips, over-time, salary, welfare assistance, social security payments, child support payments, returns on investments, and recurring gifts. The term "income" shall not include: employment income from children under eighteen years of age, employment income from children eighteen years of age or older who are full-time students, foster care payments, sporadic gifts, groceries provided by persons not living in the household, supplemental nutrition assistance program (food stamp) benefits, earned income disregard (EID), or the earned income tax credit.

9. "adjusted income" means income minus any deductions allowable by the rules promulgated by the commissioner pursuant to this article. Mandatory deductions shall include:

(a) four hundred eighty dollars for each dependent;

(b) four hundred dollars for any elderly family member and/or a family member with a disability;

(c) any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education; and

(d) The sum total of unreimbursed medical expenses for each elderly family member and/or family member with a disability plus unreimbursed attendant care and/or medical apparatus expenses for each member of the family with a disability which are necessary for any member of the family (including the member who is a person with a disability) to be employed greater than three percent of the annual income.

10. "reasonable rent" means rent not more than the rent charged on comparable units in the private unassisted market and rent charged for comparable unassisted units in the premises.

11. "fair market rent" means the fair market rent for each rental area as promulgated annually by the United States department of housing and urban development's office of policy development and research pursuant to 42 U.S.C. 1437f.

12. "voucher" means a document issued by the housing trust fund corporation pursuant to this article to an individual or family selected for admission to the housing access voucher program, which describes such program and the procedures for approval of a unit selected by the family and states the obligations of the individual or family under the program.

13. "lease" means a written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by an individual or

family with housing assistance payments under a contract between the owner and the public housing agency.

14. "dependent" means any member of the family who is neither the head of household, nor the head of the household's spouse, and who is:

(a) under the age of eighteen;

(b) a person with a disability; or

(c) a full-time student.

15. "elderly" means a person sixty-two years of age or older.

16. "child care expenses" means expenses relating to the care of children under the age of thirteen.

17. "federal poverty level" means a measure of income promulgated annually by the United States department of health and human services pursuant to 42 U.S.C. 9902 that establishes a threshold for poverty in the United States based on the size of household.

18. "severely rent burdened" means those individuals and families who pay more than fifty percent of their income in rent as defined by the United States census bureau.

19. "disability" means:

(a) the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months; or

(b) in the case of an individual who has attained the age of fifty-five and is blind, the inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which they have previously engaged with some regularity and over a substantial period of time; or

(c) a physical, mental, or emotional impairment which:

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(d) a developmental disability that is a severe, chronic disability of an individual that:

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age twenty-two;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in three or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living; or

(G) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

§ 602. Housing access voucher program. The commissioner, subject to the appropriation of funds for this purpose, shall implement a program of rental assistance in the form of housing vouchers for eligible indi-

viduals and families who are homeless or who face an imminent loss of housing in accordance with the provisions of this article. The housing trust fund corporation shall issue vouchers pursuant to this article, subject to appropriation of funds for this purpose, and may contract with the division of housing and community renewal to administer any aspect of this program in accordance with the provisions of this article. The commissioner shall designate public housing agencies in the state to make vouchers available to such individuals and families and to administer other aspects of the program in accordance with the provisions of this article.

§ 603. Eligibility. Eligibility for the housing access voucher program shall be limited to individuals and families who are homeless or facing imminent loss of housing. The commissioner shall promulgate standards for determining eligibility for this program.

1. An individual or family shall be eligible for this program if they are homeless or facing imminent loss of housing and have an income of no more than two hundred fifty percent of the federal poverty level.

2. An individual or family in receipt of rental assistance under this program shall be no longer financially eligible for assistance under this program when thirty percent of the individual or family's adjusted income is greater than or equal to the total rent for the dwelling unit.

3. When an individual or family becomes financially ineligible for rental assistance under this program pursuant to subdivision two of this section, the individual or family shall retain rental assistance for a period no shorter than one year.

4. Income eligibility shall be verified no less frequently than annually.

§ 604. Funding allocation and distribution. 1. Funding shall be allocated by the commissioner in each county and the city of New York in proportion to the number of households in each county or the city of New York who are severely rent burdened.

2. The commissioner shall be responsible for distributing the funds allocated in each county or the city of New York among public housing agencies operating in each county or in the city of New York.

3. At least fifty percent of funds distributed in each county or in the city of New York shall be allocated to individuals or families who are homeless.

4. At least eighty-seven and one-half percent of funds distributed in each county or in the city of New York shall be allocated to individuals and families whose income does not exceed the federal poverty level.

5. No funds may be allocated under this program to individuals or families whose income exceeds two hundred fifty percent of the federal poverty level.

§ 605. Payment of housing vouchers. The housing voucher shall be paid directly to any owner under a contract between the owner of the dwelling unit to be occupied by the voucher recipient and the appropriate public housing agency. A housing assistance payment contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed one hundred ten percent nor be less than ninety percent of the fair market rent for the rental area in which it is located. Fair market rent for a rental area shall be published not less than annually by the commissioner and shall be made available on the website of New York state homes and community renewal.

§ 606. Leases and tenancy. Each housing assistance payment contract entered into by a public housing agency and the owner of a dwelling unit shall provide:

1. that the lease between the tenant and the owner shall be for a term of not less than one year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

2. that the dwelling unit owner shall offer leases to tenants assisted under this article that:

(a) are in a standard form used in the locality by the dwelling unit owner; and

(b) contain terms and conditions that:

(i) are consistent with state and local law; and

(ii) apply generally to tenants in the property who are not assisted under this article;

(c) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable state or local law, or for other good cause, and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner:

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least ninety days before the effective date of such notice;

(d) shall provide that any termination of tenancy under this section shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable state and local law;

3. that any unit under an assistance contract originated under this article shall only be occupied by the individual or family designated in said contract and shall be the designated individual or family's primary residence. Contracts shall not be transferable between units and shall not be transferable between recipients. A family or individual may transfer their voucher to a different unit under a new contract pursuant to this article;

4. that an owner shall not charge more than a reasonable rent as defined in section six hundred one of this article.

§ 607. Rental obligation. 1. Each recipient of housing assistance under the housing access voucher program's monthly rental obligation shall be the greater of:

(a) thirty percent of the monthly adjusted income of the family or individual; or

(b) If the family or individual is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated. These payments include, but are not limited to any shelter assistance or housing assistance administered by any federal, state or local agency.

2. If the rent for the individual or family (including the amount allowed for tenant-paid utilities) exceeds the applicable payment stand-

ard established under subdivision one of this section, the monthly assistance payment for the family shall be equal to the amount by which the applicable payment standard exceeds the greater of amounts under paragraphs (a) and (b) of subdivision one of this section.

§ 608. Monthly assistance payment. 1. The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the individual or family is required to pay under section six hundred seven of this article. Reviews of income shall be made no less frequently than annually.

2. The commissioner shall establish maximum rent levels for different sized rentals in each rental area in a manner that promotes the use of the program in all localities based on the fair market rental of the rental area. Rental areas shall be delineated by county, excepting that the city of New York shall be considered one rental area. The commissioner may rely on data or other information promulgated by any other state or federal agency in determining the rental areas and fair market rent.

3. The payment standard for each size of dwelling unit in a rental area shall not be less than ninety percent and shall not exceed one hundred ten percent of the fair market rent established in section six hundred one of this article for the same size of dwelling unit in the same rental area, except that the commissioner shall not be required as a result of a reduction in the fair market rent to reduce the payment standard applied to a family continuing to reside in a unit for which the family was receiving assistance under this article at the time the fair market rent was reduced.

§ 609. Inspection of units by public housing agencies. 1. Initial inspection.

(a) For each dwelling unit for which a housing assistance payment contract is established under this article, the public housing agency (or other entity pursuant to section six hundred twelve of this article) shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subdivision two of this section, except as provided in paragraph (b) or (c) of this subdivision.

(b) In the case of any dwelling unit that is determined, pursuant to an inspection under paragraph (a) of this subdivision, not to meet the housing quality standards under subdivision two of this section, assistance payments may be made for the unit notwithstanding subdivision three of this section if failure to meet such standards is a result only of non-life-threatening conditions, as such conditions are established by the commissioner. A public housing agency making assistance payments pursuant to this paragraph for a dwelling unit shall, thirty days after the beginning of the period for which such payments are made, withhold any assistance payments for the unit if any deficiency resulting in noncompliance with the housing quality standards has not been corrected by such time. The public housing agency shall recommence assistance payments when such deficiency has been corrected, and may use any payments withheld to make assistance payments relating to the period during which payments were withheld.

(c) In the case of any property that within the previous twenty-four months has met the requirements of an inspection that qualifies as an alternative inspection method pursuant to subdivision five of this section, a public housing agency may authorize occupancy before the inspection under paragraph (a) of this subdivision has been completed,

and may make assistance payments retroactive to the beginning of the lease term after the unit has been determined pursuant to an inspection under paragraph (a) of this subdivision to meet the housing quality standards under subdivision two of this section. This paragraph may not be construed to exempt any dwelling unit from compliance with the requirements of subdivision four of this section.

2. The housing quality standards under this subdivision shall be standards for safe and habitable housing established:

(a) by the commissioner for purposes of this subdivision; or

(b) by local housing codes or by codes adopted by public housing agencies that:

(i) meet or exceed housing quality standards, except that the commissioner may waive the requirement under this subparagraph to significantly increase access to affordable housing and to expand housing opportunities for families assisted under this article, except where such waiver could adversely affect the health or safety of families assisted under this article; and

(ii) do not severely restrict housing choice.

3. The determination required under subdivision one of this section shall be made by the public housing agency (or other entity, as provided in section six hundred twelve of this article) pursuant to an inspection of the dwelling unit conducted before any assistance payment is made for the unit. Inspections of dwelling units under this subdivision shall be made before the expiration of the fifteen day period beginning upon a request by the resident or landlord to the public housing agency or, in the case of any public housing agency that provides assistance under this article on behalf of more than one thousand two hundred fifty families, before the expiration of a reasonable period beginning upon such request. The performance of the agency in meeting the fifteen day inspection deadline shall be taken into consideration in assessing the performance of the agency.

4. (a) Each public housing agency providing assistance under this article (or other entity, as provided in section six hundred twelve of this article) shall, for each assisted dwelling unit, make inspections not less often than annually during the term of the housing assistance payments contract for the unit to determine whether the unit is maintained in accordance with the requirements under subdivision one of this section.

(b) The requirements under paragraph (a) of this subdivision may be complied with by use of inspections that qualify as an alternative inspection method pursuant to subdivision five of this section.

(c) The public housing agency (or other entity) shall retain the records of the inspection for a reasonable time, as determined by the commissioner.

5. An inspection of a property shall qualify as an alternative inspection method for purposes of this subdivision if:

(a) the inspection was conducted pursuant to requirements under a federal, state, or local housing program; and

(b) pursuant to such inspection, the property was determined to meet the standards or requirements regarding housing quality or safety applicable to properties assisted under such program, and, if a non-state standard or requirement was used, the public housing agency has certified to the commissioner that such standard or requirement provides the same (or greater) protection to occupants of dwelling units meeting such standard or requirement as would the housing quality standards under subdivision two of this section.

6. Upon notification to the public housing agency, by an individual or family (on whose behalf tenant-based rental assistance is provided under this article) or by a government official, that the dwelling unit for which such assistance is provided does not comply with the housing quality standards under subdivision two of this section, the public housing agency shall inspect the dwelling unit:

(a) in the case of any condition that is life-threatening, within twenty-four hours after the agency's receipt of such notification, unless waived by the commissioner in extraordinary circumstances; and

(b) in the case of any condition that is not life-threatening, within a reasonable time frame, as determined by the commissioner.

7. The commissioner shall establish procedural guidelines and performance standards to facilitate inspections of dwelling units and conform such inspections with practices utilized in the private housing market. Such guidelines and standards shall take into consideration variations in local laws and practices of public housing agencies and shall provide flexibility to agencies appropriate to facilitate efficient provision of assistance under this section.

§ 610. Rent. 1. The rent for dwelling units for which a housing assistance payment contract is established under this article shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market.

2. A public housing agency (or other entity, as provided in section six hundred twelve of this article) shall, at the request of an individual or family receiving tenant-based assistance under this article, assist that individual or family in negotiating a reasonable rent with a dwelling unit owner. A public housing agency (or other such entity) shall review the rent for a unit under consideration by the individual or family (and all rent increases for units under lease by the individual or family) to determine whether the rent (or rent increase) requested by the owner is reasonable. If a public housing agency (or other such entity) determines that the rent (or rent increase) for a dwelling unit is not reasonable, the public housing agency (or other such entity) shall not make housing assistance payments to the owner under this subdivision with respect to that unit.

3. If a dwelling unit for which a housing assistance payment contract is established under this article is exempt from local rent control provisions during the term of that contract, the rent for that unit shall be reasonable in comparison with other units in the rental area that are exempt from local rent control provisions.

4. Each public housing agency shall make timely payment of any amounts due to a dwelling unit owner under this section. The housing assistance payment contract between the owner and the public housing agency may provide for penalties for the late payment of amounts due under the contract, which shall be imposed on the public housing agency in accordance with generally accepted practices in the local housing market.

5. Unless otherwise authorized by the commissioner, each public housing agency shall pay any penalties from administrative fees collected by the public housing agency, except that no penalty shall be imposed if the late payment is due to factors that the commissioner determines are beyond the control of the public housing agency.

§ 611. Vacated units. If an assisted family vacates a dwelling unit for which rental assistance is provided under a housing assistance payment contract before the expiration of the term of the lease for the unit, rental assistance pursuant to such contract may not be provided for the unit after the month during which the unit was vacated.

§ 612. Leasing of units owned by a public housing agency. 1. If an eligible individual or family assisted under this article leases a dwelling unit (other than a public housing dwelling unit) that is owned by a public housing agency administering assistance to that individual or family under this section, the commissioner shall require the unit of general local government or another entity approved by the commissioner, to make inspections required under section six hundred nine of this article and rent determinations required under section six hundred ten of this article. The agency shall be responsible for any expenses of such inspections and determinations.

2. For purposes of this section, the term "owned by a public housing agency" means, with respect to a dwelling unit, that the dwelling unit is in a project that is owned by such agency, by an entity wholly controlled by such agency, or by a limited liability company or limited partnership in which such agency (or an entity wholly controlled by such agency) holds a controlling interest in the managing member or general partner. A dwelling unit shall not be deemed to be owned by a public housing agency for purposes of this section because the agency holds a fee interest as ground lessor in the property on which the unit is situated, holds a security interest under a mortgage or deed of trust on the unit, or holds a non-controlling interest in an entity which owns the unit or in the managing member or general partner of an entity which owns the unit.

§ 613. Verification of income. The commissioner shall establish procedures which are appropriate and necessary to assure that income data provided to the public housing agency and owners by individuals and families applying for or receiving assistance under this article is complete and accurate. In establishing such procedures, the commissioner shall randomly, regularly, and periodically select a sample of families to authorize the commissioner to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and federal income taxation and data relating to benefits made available under the social security act, 42 U.S.C. 301 et seq., the food and nutrition act of 2008, 7 U.S.C. 2011 et seq., or title 38 of the United State Code. Any such information received pursuant to this section shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of individuals and families for benefits (and the amount of such benefits, if any) under this article.

§ 614. Division of an assisted family. 1. In those instances where a family assisted under this article becomes divided into two otherwise eligible individuals or families due to divorce, legal separation or the division of the family, where the new units cannot agree as to which new unit should continue to receive the assistance, and where there is no determination by a court, the public housing authority shall consider the following factors to determine which of the individuals or families will continue to be assisted:

(a) which of the new units has custody of dependent children;

(b) which family member was the head of household when the voucher was initially issued (listed on the initial application);

(c) the composition of the new units and which unit includes elderly or disabled members;

(d) whether domestic violence was involved in the breakup of the family unit;

(e) which family members remain in the unit; and

(f) recommendations of social service professionals.

2. Documentation of these factors will be the responsibility of the requesting parties. If documentation is not provided, the public housing agency will terminate assistance on the basis of failure to provide information necessary for a recertification.

§ 615. Maintenance of effort. Any funds made available pursuant to this article shall not be used to offset or reduce the amount of funds previously expended for the same or similar programs in a prior year in any county or in the city of New York, but shall be used to supplement any prior year's expenditures. The commissioner may grant an exception to this requirement if any county, municipality, or other governmental entity or public body can affirmatively show that such amount of funds previously expended is in excess of the amount necessary to provide assistance to all individuals and families within the area in which the funds were previously expended who are homeless or facing an imminent loss of housing.

§ 616. Vouchers statewide. Notwithstanding section six hundred six of this article, any voucher issued pursuant to this article may be used for housing anywhere in the state. The commissioner shall inform voucher holders that a voucher may be used anywhere in the state and, to the extent practicable, the commissioner shall assist voucher holders in finding housing in the area of their choice.

§ 617. Applicable codes. Housing eligible for participation in the homeless access voucher program shall comply with applicable state and local health, housing, building and safety codes.

§ 618. Housing choice. 1. The commissioner shall administer the homeless access voucher program under this article to promote housing choice for voucher holders. The commissioner shall affirmatively promote fair housing to the extent possible under this program.

2. Nothing in this article shall lessen or abridge any fair housing obligations promulgated by municipalities, localities, or any other applicable jurisdiction.

§ 2. This act shall take effect on the first of October next succeeding the date on which it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.