STATE OF NEW YORK

1401

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. THIELE, PAULIN, MAGNARELLI, DAVILA, BURDICK -- 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:

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

§ 2. The private housing finance law is amended by adding a new article 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.

§ 1290. Legislative findings and purpose. The legislature hereby finds that according to a 2019 report from the state comptroller, millions of renters and homeowners in our state struggle with high housing costs. As of 2017, nearly 2.8 million New York households faced housing costs that were 30 percent or more of their income, a commonly accepted benchmark for housing affordability. Almost half of all renters and more than one in four homeowners were in this category, according to U.S. Census Bureau data. Based on criteria used by the U.S. Department of Housing and Urban Development, more than 1.3 million households - including more than one of every four renters - were "severely burdened" by housing costs of half or more of their income. High housing costs may force families and individuals to reduce or forego other necessities. Many find it impossible to put aside savings for emergency needs, college or retirement. Some may face eviction or conclude their only choice is to

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

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move to lower-cost locations. Such outcomes have broader, harmful implications for New York's economy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the interest rate shall be the prevailing market rate, as determined by division;

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

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

(v) the loan shall be forgiven if the accessory dwelling unit is rented to tenants in compliance with the income and rent guidelines for the 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 (bbb) to read as follows:

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

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

§ 463. Affordable accessory dwelling units. 1. After a public hearing, the governing body of a county, city, town or village may adopt a local law or a school district may adopt a resolution, providing for an exemption pursuant to the provisions of this section. Such local law or resolution may provide that an improvement to any real property used for residential purposes shall be exempt from taxation and special ad valorem levies to the extent of any increase in value attributable to such improvement if such improvement is used for the purpose of an affordable accessory dwelling unit, 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. For the purposes of this section 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. To be eligible for the exemption provided for herein, the occupancy, 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.

2. Such exemption shall be granted only upon application by the owner or all of the owners of the real property on a form prescribed and made available by the commissioner. The applicant shall furnish such information as the commissioner shall require. The application shall be filed together with a copy of the legal instrument with the applicable occupancy, income and rent restrictions recorded against the property with the assessor of the appropriate county, city, town, or village on or before the taxable status date of such county, city, town, or village.

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

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

§ 5. If any clause, sentence, subdivision, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, and such decision is not reversed or is otherwise deemed to

be final, such judgment shall not have the effect of rendering this act invalid, inoperative and void.

§ 6. This act shall take effect immediately.