STATE OF NEW YORK

5342--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. EPSTEIN, BURDICK -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to establishing an accessory dwelling unit incentive program; to amend the executive law, in relation to including an accessory dwelling unit in the term housing accommodations in the human rights law; and to amend the real property tax law, in relation to providing a tax exemption on the increase in value of property resulting from the addition of an accessory dwelling unit

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

Section 1. The real property law is amended by adding a new article 16 to read as follows:

ARTICLE 16

ACCESSORY DWELLING UNITS

Section 480. Definitions.
481. Accessory dwelling unit incentive program and local laws.
482. Low- and moderate-income homeowners program.

§ 480. Definitions. As used in this article, unless the context otherwise requires, 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 multi-family dwelling.

2. "Local government" shall mean a city, town or village.

3. "Low-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding eighty percent of the area median income.

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

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4. "Moderate-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding one hundred twenty percent of the area median income as defined by the division.

5. "Nonconforming zoning condition" shall mean a physical improvement on a property that does not conform with current zoning standards.

6. "Proposed dwelling" shall mean a dwelling that is the subject of a permit application and that meets the requirements for permitting.

7. "Division" shall mean the New York state division of housing and community renewal.

§ 481. Accessory dwelling unit incentive program and local laws. 1. Within one hundred eighty days of the effective date of this article, the division shall establish an opt-in program for local governments who already have or who enact a local law or ordinance that meets the requirements of subdivision two of this section which encourages the creation of accessory dwelling units. A local government shall have five years from the date such program is established to enact such local law or ordinance to qualify for the program.

2. (a) To qualify for the program established pursuant to subdivision one of this section, a local law or ordinance shall:

(i) Designate areas within the jurisdiction of the local government where accessory dwelling units shall be permitted. Designated areas shall include all areas zoned for single-family or multi-family residential use, and all lots with an existing residential use.

(ii) Provide for protections for existing illegal accessory dwelling units to aid in the conversion of such units to become legal and in compliance with state and local regulations, including but not limited to: (1) a mechanism for the conversion of an illegal accessory dwelling unit to be a legal unit, provided such unit is in compliance with all applicable fire and safety codes; and (2) protections for tenants of illegal accessory dwelling units from unreasonable rent increases.

(iii) Provide for a streamlined approval process involving no more than one meeting with the applicable approving authority, and limiting the cost of any necessary applications and permits to a total of five hundred dollars.

(iv) Provide that sewer and septic hookups shall be governed under the applicable existing local requirements.

(b) A qualifying local law or ordinance may:

(i) Require owner occupancy in either the primary or accessory dwelling unit.

(ii) Set a minimum lease duration for accessory dwelling units.

(iii) Limit the total build out to the existing allowable square-foot-under-floor ratio and lot coverage, consistent with existing setback for other accessory uses.

(iv) Set minimum or maximum size limits for an accessory dwelling unit.

(c) To qualify for the program established pursuant to subdivision one of this section, a local law or ordinance shall not:

(i) Impose an off-street parking requirement on an accessory dwelling unit, except where no adjacent public street permits year-round on-street parking and the accessory dwelling unit is greater than one-half mile from a subway stop, rail station or bus stop. For purposes of this subparagraph, an adjacent public street shall be considered as permitting year-round on-street parking notwithstanding rules that prohibit parking during limited hours or on certain days of the week.

(ii) Impose undue or unnecessary fire and safety codes on accessory dwelling units.

(iii) Require more than one point of exterior access by door to an accessory dwelling unit.

3. To opt-in to the program established pursuant to subdivision one of this section a local government shall submit a copy of its local law or ordinance to the division. Within ninety days of receipt of a local government's law or ordinance, the division shall submit written findings to the local government as to whether the local government's local law or ordinance qualifies for the program.

4. All local governments who opt-in to the program and are determined by the division to have a qualifying local law or ordinance shall be eligible for a ten percent increase of points on such local government's consolidated funding application, a ten percent increase in aid and incentives for municipalities and aid and incentives for municipalities related payments, increased eligibility for individual infrastructure, transportation, parks, and economic development grants.

§ 482. Low- and moderate-income homeowners program. 1. Within one hundred eighty days of the effective date of this article, the division shall establish a lending program to assist low-income homeowners and moderate-income homeowners in securing financing for the creation of accessory dwelling units.

2. An accessory dwelling unit financed with the assistance of such program shall, if such assistance is in the form of a forgivable grant at a below-market rate for a period of no less than thirty years and if any such assistance is in the form of a repayable loan, be offered for rent at a below-market rate for a period of fifteen years.

3. Such program shall be funded through capital projects appropriations and reappropriations set forth in the state fiscal year housing program.

4. Within one hundred eighty days of the effective date of this article, the division shall establish a program to provide technical assistance to all homeowners seeking to create an accessory dwelling unit, and to protect tenants of accessory dwelling units against discrimination, unreasonable rent increases and unwarranted evictions.

5. An accessory dwelling unit financed with the assistance of such program shall be limited to an annual maximum rent increase of the lower of (a) three percent or (b) one and one-half times the annual percentage change in the consumer price index for the region in which the accessory dwelling unit is located.

6. The division shall promulgate program criteria and guidelines necessary to carry out such program.

§ 2. Section 292 of the executive law is amended by adding a new subdivision 42 to read as follows:

42. The term "housing accommodation" as used in this article shall include an accessory dwelling unit as defined in subdivision one of section four hundred eighty of the real property law.

§ 3. Paragraph (a) of subdivision 1 of section 296 of the executive law, as separately amended by chapters 202 and 748 of the laws of 2022, is amended to read as follows:

(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. In the case of an

accessory dwelling unit as defined in subdivision one of section four hundred eighty of the real property law, the exemption from the provisions of this paragraph for the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such accommodations, shall not apply.

§ 4. The real property tax law is amended by adding a new section 421-p to read as follows:

§ 421-p. Exemption of capital improvements to residential new construction involving the creation of accessory dwelling units. 1. Residential buildings reconstructed, altered, improved, or newly constructed in order to create one or more additional residential dwelling units on the same parcel as a pre-existing residential building to provide independent living facilities for one or more persons subsequent to the effective date of a local law or resolution enacted pursuant to this section shall be exempt from taxation and special ad valorem levies to the extent provided hereinafter. After a public hearing, the governing board of a county, city, town or village may adopt a local law and a school district, other than a school district subject to article fifty-two of the education law, may adopt a resolution to grant the exemption authorized pursuant to this section. A copy of such local law or resolution shall be filed with the commissioner and the assessor of such county, city, town or village who prepares the assessment roll on which the taxes of such county, city, town, village or school district are levied.

2. (a) Such buildings shall be exempt for a period of five years to the extent of one hundred per centum of the increase in assessed value thereof attributable to such reconstruction, alteration, improvement, or new construction for such additional residential unit or units that provide independent living facilities for one or more persons, and for an additional period of five years subject to the following:

(i) The extent of such exemption shall be decreased by twenty-five per centum of the "exemption base" for each of the first three years during such additional period and shall be decreased by a further ten per centum of the "exemption base" during each of the final two years of such additional period. The exemption shall expire at the end of the extended period. The "exemption base" shall be the increase in assessed value as determined in the initial year of the term of the exemption, except as provided in subparagraph (ii) of this paragraph.

(ii) In any year in which a change in level of assessment of fifteen percent or more is certified for a final assessment roll pursuant to the rules of the commissioner, the exemption base shall be multiplied by a fraction, the numerator of which shall be the total assessed value of the parcel on such final assessment roll (after accounting for any physical or quantity changes to the parcel since the immediately preceding assessment roll), and the denominator of which shall be the total assessed value of the parcel on the immediately preceding final assessment roll. The result shall be the new exemption base. The exemption shall thereupon be recomputed to take into account the new exemption base, notwithstanding the fact that the assessor receives certification of the change in level of assessment after the completion, verification and filing of the final assessment roll. In the event the assessor does not have custody of the roll when such certification is received, the assessor shall certify the recomputed exemption to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certi-

fied by the assessor on the roll. The assessor shall give written notice of such recomputed exemption to the property owner, who may, if he or she believes that the exemption was recomputed incorrectly, apply for a correction in the manner provided by title three of article five of this chapter for the correction of clerical errors.

(iii) Such exemption shall be limited to two hundred thousand dollars in increased market value of the property attributable to such reconstruction, alteration, improvement, or new construction and any increase in market value greater than such amount shall not be eligible for the exemption pursuant to this section. For the purposes of this section, the market value of the reconstruction, alteration, improvement, or new construction as authorized by subdivision one of this section shall be equal to the increased assessed value attributable to such reconstruction, alteration, improvement, or new construction divided by the class one ratio in a special assessing unit or the most recently established state equalization rate or special equalization rate in the remainder of the state, except where the state equalization rate or special equalization rate equals or exceeds ninety-five percent, in which case the increase in assessed value attributable to such reconstruction, alteration, improvement, or new construction shall be deemed to equal the market value of such reconstruction, alteration, improvement, or new construction.

(b) No such exemption shall be granted for reconstruction, alterations, improvements, or new construction unless:

(i) such reconstruction, alteration, improvement, or new construction was commenced subsequent to the effective date of the local law or resolution adopted pursuant to subdivision one of this section; and

(ii) the value of such reconstruction, alteration, improvement, or new construction exceeds three thousand dollars; and

(iii) such reconstruction, alteration, improvement, or new construction created one or more additional residential dwelling units on the same parcel as the pre-existing residential building to provide independent living facilities for one or more persons.

(c) For purposes of this section the terms reconstruction, alteration, improvement, and new construction shall not include ordinary maintenance and repairs.

3. Such exemption shall be granted only upon application by the owner of such building on a form prescribed by the commissioner. The application shall be filed with the assessor of the city, town, village or county having the power to assess property for taxation on or before the appropriate taxable status date of such city, town, village or county.

4. If satisfied that the applicant is entitled to an exemption pursuant to this section, the assessor shall approve the application and such building shall thereafter be exempt from taxation and special ad valorem levies as herein provided commencing with the assessment roll prepared on the basis of the taxable status date referred to in subdivision three of this section. The assessed value of any exemption granted pursuant to this section shall be entered by the assessor on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.

5. For the purposes of this section, a residential building shall mean any building or structure designed and occupied exclusively for residential purposes by not more than two families.

6. In the event that a building granted an exemption pursuant to this section ceases to be used primarily for residential purposes, or title

thereto is transferred to other than the heirs or distributees of the owner, the exemption granted pursuant to this section shall cease.

7. (a) A county, city, town or village may, by its local law, or school district, by its resolution:

(i) reduce the per centum of exemption otherwise allowed pursuant to this section; and

(ii) limit eligibility for the exemption to those forms of reconstruction, alterations, improvements, or new construction as are prescribed in such local law or resolution.

(b) No such local law or resolution shall repeal an exemption granted pursuant to this section until the expiration of the period for which such exemption was granted.

§ 5. This act shall take effect immediately; provided however, that section four of this act shall apply to assessment rolls based on taxable status dates occurring on or after such effective date.