

# STATE OF NEW YORK

2985

2023-2024 Regular Sessions

## IN SENATE

January 26, 2023

Introduced by Sens. KAVANAGH, CLEARE, SEPULVEDA -- 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:

1 Section 1. The private housing finance law is amended by adding a new  
2 article 32 to read as follows:

3 ARTICLE XXXII

4 AFFORDABILITY PLUS PROGRAM

5 Section 1290. Short title.

6 1291. Statement of legislative findings and purpose.

7 1292. Definitions.

8 1293. Loans and grants.

9 1294. Rents.

10 1295. Rules; enforcement.

11 1296. Severability.

12 1297. Reporting.

13 § 1290. Short title. This article shall be known and may be cited as  
14 the "affordability plus program".

15 § 1291. Statement of legislative findings and purpose. The legislature  
16 hereby finds and declares that there is, in cities having a population  
17 of one million or more, a seriously inadequate supply of safe and sani-  
18 tary housing accommodations within the financial reach of families and  
19 persons of low income. This condition is contrary to the public interest  
20 and threatens the health, safety, welfare, comfort and security of the  
21 people of such cities. The legislature further finds and declares that  
22 the ordinary operations of private enterprise cannot provide an adequate  
23 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.

LBD07187-01-3

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

5 § 1292. Definitions. For the purposes of this article, the following  
6 terms shall have the following meanings:

7 1. "Agency" shall mean a department of housing preservation and devel-  
8 opment in a city having a population of one million or more.

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

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

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

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

33 § 1293. Loans and grants. 1. Notwithstanding the provisions of any  
34 general, special or local law, a city having a population of one million  
35 or more is authorized to make loans or grants to the owner of any real  
36 property for the purpose of: (a) construction, rehabilitation, conver-  
37 sion, acquisition or refinancing of housing accommodations; (b) provid-  
38 ing site improvements, including, but not limited to, water and sewer  
39 facilities, sidewalks, landscaping, the curing of problems caused by  
40 abnormal site conditions, excavation and construction of footings and  
41 foundations and other improvements associated with the provision of  
42 infrastructure for housing accommodations; or (c) providing for other  
43 costs of developing housing accommodations.

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

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

3 3. The repayment of any loan made in accordance with this section  
4 shall be made in such manner as may be provided in the note and any  
5 mortgage in connection with such loan. Such note and mortgage may  
6 contain such terms and conditions as the city may deem necessary or  
7 desirable to effectuate the purposes and provisions of this article.  
8 Such terms and conditions may include, but shall not be limited to,  
9 provisions concerning: (a) the repayment of the loan; (b) the interest,  
10 if any, thereon; (c) the charges, if any, in connection therewith; and  
11 (d) the prepayment of the principal of the loan. Such note and mortgage  
12 may provide that all or a portion of the principal of the loan shall  
13 automatically be reduced to zero over a period of continuous compliance  
14 by the owner with a regulatory agreement and upon the satisfaction of  
15 any additional conditions specified therein. Notwithstanding such  
16 provision as contained in the note and mortgage, all or a portion of the  
17 principal of the loan shall be reduced to zero only if, prior to or  
18 simultaneously with delivery of such note and mortgage, the agency made  
19 a written determination that such reduction would be necessary to ensure  
20 the continued affordability or economic viability of the housing accom-  
21 modations assisted by such loan. Such written determination shall docu-  
22 ment the basis upon which the loan was determined to be eligible for  
23 evaporation.

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

35 5. The city shall not make any loan or grant pursuant to this section  
36 unless the agency has made a written determination, which shall be stat-  
37 ed or referenced in the regulatory agreement, that such loan or grant is  
38 necessary to ensure the affordability or economic viability of the hous-  
39 ing accommodations in accordance with the terms of the regulatory agree-  
40 ment.

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

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

52 8. The agency may make provisions, either in the mortgage or by sepa-  
53 rate agreement, for the performance of such loan servicing functions,  
54 including functions related to construction lending, as may generally be  
55 performed by an institutional lender. The agency may act in such capaci-  
56 ty or appoint or consent to the appointment of a financial institution

1 to act in such capacity on behalf of the agency. The agency is author-  
2 ized to pay a reasonable and customary fee to such financial institution  
3 for the performance of such services.

4 § 1294. Rents. Notwithstanding the provisions of rent stabilization or  
5 the local emergency housing rent control act, or any regulation or local  
6 law enacted pursuant thereto:

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

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

23 3. Upon completion of the construction or rehabilitation of a housing  
24 accommodation which is assisted by a loan or grant made by a city pursu-  
25 ant to section twelve hundred ninety-three of this article, the agency  
26 may establish a new initial rent for each dwelling unit subject to rent  
27 stabilization within the housing accommodation pursuant to subdivision  
28 one of this section or otherwise. Prior to the making of a rehabili-  
29 tation loan or grant pursuant to this article, the agency shall cause  
30 each tenant in occupancy of a dwelling unit for which the agency intends  
31 to establish a new initial rent to be notified of and have an opportu-  
32 nity to comment on the contemplated rehabilitation. Such notification  
33 shall advise such tenants of the approximate expected initial rent. Such  
34 notification and opportunity to comment shall be provided before the  
35 rehabilitation and again after the rehabilitation is completed and prior  
36 to the establishment of the new initial rents. A representative of the  
37 agency shall meet or offer to meet with all tenants in occupancy of  
38 dwelling units affected by the provisions of this subdivision at least  
39 once before the rehabilitation.

40 § 1295. Rules; enforcement. 1. The agency may promulgate rules to  
41 carry out the provisions of this article, and may require a filing fee  
42 in an amount equal to one thousand dollars per dwelling unit, or such  
43 lesser amount as may be provided by such rules, in connection with any  
44 application for a loan or grant pursuant to this article.

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

51 § 1296. Severability. If any clause, sentence, paragraph, section or  
52 part of this article shall be adjudged by any court of competent juris-  
53 isdiction to be invalid, such judgment shall not affect, impair or invali-  
54 date the remainder thereof, but shall be confined in its operation to  
55 the clause, sentence, paragraph, section or part thereof directly

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

3 § 1297. Reporting. On or before September thirtieth of each year,  
4 beginning in two thousand twenty-four, the agency shall submit a report  
5 to the temporary president of the senate and the speaker of the assembly  
6 on the housing production activity of the affordability plus program for  
7 the previous city fiscal year.

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

10 41-f. Affordability plus program. The making of loans or grants,  
11 pursuant to article thirty-two of the private housing finance law, thir-  
12 ty years; improvements associated with the construction, rehabilitation,  
13 conversion, acquisition or refinancing of housing accommodations, pursu-  
14 ant to article thirty-two of the private housing finance law, thirty  
15 years.

16 § 3. This act shall take effect immediately.