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Introduced by Sens. JACKSON, CLEARE, HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the private housing finance law, in relation to enacting the housing development fund company fairness, preservation, and affordability act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "housing development fund company fairness, preservation, and
3 affordability act".

4 § 2. Legislative findings and declarations. 1. In 1966, the legisla-
5 ture enacted article 11 of the private housing finance law. Article 11
6 authorized the development of rental and cooperative housing that is
7 subject to certain income restrictions. The type of income-restricted
8 housing is referred to as housing development fund companies (HDFCs).

9 2. Beginning in the early 1980s, New York city adopted the HDFC form
10 of housing cooperative as a means to divest itself of -- and revitalize
11 -- its tax-foreclosed multi-family housing stock. At the time the city
12 was experiencing large-scale abandonment of its private low and middle-
13 income multi-family housing stock. In response to this housing crisis,
14 the city determined to turn over the ownership and management of many
15 city-owned tax-foreclosed multifamily buildings to the existing tenants
16 in the form of HDFC co-ops.

17 3. Previously, the city sold at auction nearly all of its tax-forec-
18 closed multi-family property to private investors - and that traditional
19 approach to disposing of tax foreclosed property had led to an acceler-

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

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ating cycle of housing disinvestment and abandonment. The city's HDFC initiative was in the city's own interests: it enabled the city to avoid the counterproductive private auction process and to return the buildings to the tax rolls.

4. Over the past four decades the city's HDFC initiative proved to be one of New York's most enduring housing success stories. Tens of thousands of resident-shareholders of HDFCs played an important role in the stabilization and preservation of New York city's multi-family housing stock in the period following the city's fiscal crisis of the 1970s and 1980s. The city's large-scale creation of HDFC co-ops was a major policy innovation and was an important part of the city's response to the housing crisis of that era. Today, there are over 1,100 HDFC co-ops in New York city.

5. All government and community stakeholders benefitted from the large-scale creation of HDFCs. The city benefitted by reducing its enormous portfolio of tax-foreclosed apartment buildings at a time when the buildings were a substantial burden to the city and when there was little in the way of a private market for these properties. The residents benefitted by the preservation and upgrading of their own buildings and by becoming homeowners for the first time. And the surrounding communities benefitted by the stabilization of the neighborhood, the upgrading of housing and by the transformation of a rental community into a homeownership community.

6. When the city imposed regulatory controls on the city-sponsored HDFCs, the regulatory controls placed on HDFCs were time-limited. Consequently, the HDFCs that were created in the 1980s and 1990s have regulatory controls that already have expired or will soon expire. For this class of HDFCs, there is a great deal of uncertainty as to their financial future.

7. This legislation clarifies the legal status of HDFCs with expired regulatory controls in a way that promotes their continuing affordability while protecting their autonomy and self-governance.

8. An important feature of city-sponsored HDFCs is the city's use of its authority to enter into a "regulatory agreement" with the HDFC. Under section 576 of the private housing finance law, either the state or the municipal "supervisory agency" (i.e., HPD) may enter into a regulatory agreement with an HDFC if the agency advances public funds to the HDFC. Under such section of the private housing finance law, every HDFC regulatory agreement must provide that:

(1) Households must meet income eligibility guidelines, which are defined by statute as six times the annual rent plus six percent of the shareholder's "original investment" in the HDFC. See paragraph b of subdivision 1 of section 576 of the private housing finance law.

(2) Profits must be used only for capital improvements or to reduce rent/maintenance. Dividends cannot be paid to owners. See paragraphs c and d of subdivision 1 of section 576 of the private housing finance law.

(3) The property may not be sold or transferred without HPD approval for so long as the regulatory agreement remains in effect and/or unless and until any funds or mortgages owed to the city are paid in full. See paragraph e of subdivision 1 of section 576 of the private housing finance law.

9. The city applied its section 576 authority to HDFCs in two ways: i.e. (1) some of the terms of the section 576 "regulatory agreement" were incorporated into various HDFC incorporation documents and in the deed conveying title to the property; and (2) a regulatory agreement was

1 incorporated into mortgage documents when the city made loans to HDFCs
2 to finance capital improvements. In each case the city imposed resale
3 restrictions that had a fixed term. At the inception of the HDFC program
4 in the early 1980s, city-sponsored resale restrictions imposed by the
5 sale documents expired in ten years. By the late 1980s, city-sponsored
6 resale restrictions imposed by the sale documents ran for 25 years.
7 Furthermore, resale restrictions that were made a part of city-sponsored
8 rehabilitation loans to HDFCs ran for the life of the loan -- i.e.,
9 usually 15 to 25 years.

10 10. Thus, the city used section 576 of the private housing finance law
11 as a means to impose additional terms and conditions (including resale
12 restrictions) on the operation of the HDFC for a fixed term following
13 the establishment of the housing cooperative or during the life of a
14 city-sponsored loan to the HDFC. For the vast majority of HDFCs, these
15 restrictions have expired.

16 11. There are presently over 1,100 HDFCs in New York city containing
17 approximately 25,000 apartments. Of these HDFCs, approximately 20
18 percent are subject to regulatory agreements. A substantial number of
19 non-regulated HDFCs date from the 1980s and 1990s. These older HDFCs are
20 no longer subject to city resale restrictions that expired after either
21 ten years or 25 years following the incorporation of the HDFCs.

22 12. A city-established HDFC is eligible to receive a partial real
23 estate tax exemption granted by the city pursuant to section 577 of the
24 private housing finance law. Pursuant to this authority, the city in
25 1989 enacted a partial tax exemption for most city-sponsored HDFCs. The
26 tax exemption is generally referred to as the "Division of Alternative
27 Management Programs" tax exemption, or "DAMP tax exemption".

28 13. The current HDFC tax exemption for most city-sponsored HDFCs
29 co-ops is scheduled to expire in 2029. Already, many financial insti-
30 tutions have indicated a reluctance to lend to HDFCs in light of the
31 financial uncertainty associated with the scheduled expiration of the
32 HDFC tax exemption in four years. This legislation will eliminate this
33 uncertainty by providing a permanent tax incentive for HDFCs.

34 14. Currently, HDFC co-ops receive a partial tax exemption - known as
35 "the DAMP tax benefit". The DAMP tax benefit takes the form of a cap on
36 assessed valuation per dwelling unit - currently \$12,542. As previously
37 noted, this legislation removes the sunseting of the DAMP tax exemption
38 and makes the tax exemption permanent. Furthermore, the legislation
39 allows HDFC co-ops to receive the greater of the DAMP tax exemption or
40 twice the tax abatement that most market-rate co-ops presently currently
41 receive under section 467-a of the real property tax law (but which HDFC
42 co-ops presently are ineligible to receive). This alternative tax bene-
43 fit to HDFCs is a recognition that income-restricted HDFC co-ops are
44 entitled to greater benefits than market-rate co-ops. This alternative
45 tax benefit is a vital means to promote and protect housing affordabili-
46 ty and to provide financial stability to HDFCs. It is especially impor-
47 tant to the HDFCs with an assessed valuation below the current cap of
48 \$12,542, which are not currently eligible to receive the DAMP tax
49 exemption.

50 15. The fact that market-rate co-ops are eligible to receive a tax
51 abatement under section 467-a of the real property tax law, but that
52 HDFC co-ops presently are ineligible to receive any such tax abatement,
53 is an inequity that is corrected by this legislation. As stated above,
54 the real property tax law section 467-a tax abatement is received by
55 most housing cooperatives in New York City other than HDFCs. This tax
56 abatement contains no income restrictions or similar eligibility

requirements. A luxury co-op on Park Avenue is eligible for a conventional co-op tax abatement. Currently, a conventional co-op that is assessed at \$50,000 per unit or less is eligible for a tax abatement of 28.1 percent. A conventional co-op that is assessed above \$60,000 per unit - without any upper limit to assessed value - is subject to a 17.5 percent tax abatement. However, under current law, HDFCs that receive the DAMP tax exemption are not eligible to receive either the 28.1 percent real property tax law tax abatement or the 19 percent real property tax law tax abatement. See paragraph (b) of subdivision 2 of section 467-a of the real property tax law which provides that housing cooperatives that receive most other real estate tax incentives are not eligible to receive the conventional co-op tax abatement. This places many income-restricted HDFCs co-ops in the anomalous position of receiving less of a tax benefit than a conventional co-op without any income restrictions whatsoever.

16. Although HDFCs do receive the DAMP tax exemption in lieu of the conventional co-op tax abatement, the application of the DAMP tax exemption to many HDFC co-ops is not nearly as valuable as would be the application of the real property tax law section 467-a tax abatement. For many HDFCs, especially those located in lower-income neighborhoods, the DAMP tax exemption provides no value at all. This is so because the real property tax law section 467-a tax abatement provides a dollar-for-dollar reduction in real estate tax liability. By contrast, the DAMP tax exemption merely provides a cap on assessed valuation, and thereby a cap on the resulting real estate tax liability. If an HDFC's assessment is already below the DAMP "cap," then the HDFC receives no tax benefit at all. Hence, many HDFCs located in low-income neighborhoods receive no tax benefit whatsoever. This is manifestly unfair.

17. This legislation remedies this anomaly by providing that HDFC co-ops are entitled to receive either the benefits of a conventional co-op tax abatement or the DAMP tax exemption. As a matter of fairness and equity, an HDFC income-restricted co-op should receive at least the tax benefit that a market-rate co-op receives. This legislation goes further and provides that HDFC co-ops are entitled to the greater of twice the conventional co-op tax abatement or the DAMP tax exemption. As previously stated, this increased benefit is a recognition that HDFC co-ops are entitled to greater benefits than market-rate co-ops as a vital means to promote and protect housing affordability in New York City and as a means to provide financial stability to HDFCs.

18. This legislation also establishes a mechanism to ensure that HDFCs that receive the tax benefit comply with the new affordability requirements. As a condition of the continuing receipt of the tax benefit, each HDFC is required to file an annual certification stating that it has complied with the affordability requirements. HPD is authorized to review and audit the sales records of the HDFC in order to ensure compliance with these requirements. Furthermore, HPD has the right to suspend or revoke the tax exemption and tax abatement if HPD determines that HDFC has willfully not complied with the affordability requirements.

19. For the vast majority of HDFC co-ops, the proposed enhanced real estate tax benefit -- together with the availability of below-market interest financing available through HPD -- would be sufficient to ensure both affordability and fiscal stability. However, for perhaps 10 to 20 percent of HDFCs -- which are in fair to poor financial condition - something more is needed. In recognition of this special need of economically distressed HDFCs, the legislation extends the authority of

1 the city of New York to offer special tax relief to HDFC co-ops that are
2 in severe fiscal distress and that are in danger of tax foreclosure by
3 reason of unpaid real estate taxes. Such tax relief is conditioned on
4 the HDFC co-op agreeing to enter into a special regulatory agreement in
5 which the city exercises appropriate oversight and monitoring of the
6 HDFC. Current legislation was enacted in 2002 and authorized tax
7 forgiveness only for HDFCs that "(as of) January 1, 2002 had outstanding
8 municipal real estate taxes relating to any period prior to January 1,
9 2001." This baseline year for tax forgiveness (i.e., tax arrears as of
10 2001) has never been updated to a more current tax year. The legislation
11 updates the baseline year so that the city has the flexibility to offer
12 tax forgiveness (in appropriate cases and subject to strict controls set
13 forth in current law) for HDFC co-ops that are at risk of tax foreclo-
14 sure. In this way an economically distressed HDFC co-op is saved from
15 tax foreclosure, and may thereby provide sustainable and affordable
16 housing for years to come. This is critically important - not just for
17 the HDFC shareholders themselves - but also for neighborhood stability.

18 20. In summary, this legislation provides a much needed permanent tax
19 incentive for HDFCs -- as well as targeted tax relief for economically
20 distressed HDFCs. The permanent tax benefit will eliminate the current
21 uncertainty surrounding the expiration of the DAMP tax exemption in 2029
22 - and will thereby ease the availability of mortgage financing for
23 HDFCs.

24 § 3. Section 576 of the private housing finance law is amended by
25 adding a new subdivision 4 to read as follows:

26 4. A housing development fund company that is no longer subject either
27 to a regulatory agreement or to deed restrictions entered into with the
28 commissioner or supervisory agency shall continue to be subject to the
29 oversight of the commissioner or supervisory agency, subject to the
30 limitation set forth in paragraph (d) of subdivision one of section five
31 hundred seventy-seven of this article, provided that the housing devel-
32 opment fund company receives a tax exemption and/or tax abatement pursu-
33 ant to section five hundred seventy-seven of this article.

34 § 4. Subdivision 1 of section 577 of the private housing finance law,
35 as amended by chapter 658 of the laws of 1967, paragraph (a) as amended
36 by chapter 428 of the laws of 1980, paragraph (c) as added by chapter
37 494 of the laws of 1995, and paragraph (d) as added by chapter 73 of the
38 laws of 2009, is amended to read as follows:

39 1. (a) The local legislative body of any municipality in which a
40 project of a housing development fund company is or is to be located may
41 exempt and abate the real property in such project from local and munic-
42 ipal taxes including school taxes, other than assessments for local
43 improvements, to the extent of all or part of the value of the property
44 included in the completed project. The tax exemption and tax abatement
45 shall operate and continue for [~~such period as may be provided by such~~
46 ~~local legislative body, but in no event for a period of more than forty~~
47 ~~years, commencing~~] so long as a housing development fund company remains
48 in compliance with the requirements of this section, and shall commence
49 in each instance from the date on which the benefits of such exemption
50 first became available and effective. The tax exemption and tax abate-
51 ment shall be applied to:

52 (i) newly created housing development fund companies that are subject
53 to regulatory agreement and/or contractual or deed restrictions imposed
54 by the commissioner or supervisory agency;

1 (ii) housing development fund companies that are presently subject to
2 a regulatory agreement and/or contractual or deed restrictions imposed
3 by the commissioner or supervisory agency; and

4 (iii) housing development fund companies that are not presently
5 subject to a regulatory agreement and are not presently subject to
6 contractual or deed restrictions imposed by the commissioner or supervi-
7 sory agency but that agree to the conditions of the tax exemption and
8 tax abatement as hereinafter described in paragraph (b) of this subdivi-
9 sion.

10 (b) In order for a housing development fund company described in
11 subparagraph (iii) of paragraph (a) of this subdivision to be eligible
12 for a tax exemption and tax abatement pursuant to this section, such
13 company shall be required, for so long as it receives such tax exemption
14 and tax abatement, to not approve a sale of an apartment unless the
15 purchaser of the apartment provides satisfactory proof of income and
16 unless the income of the purchaser is no greater than the income limita-
17 tion specified herein. Such income limitation shall be, at the election
18 of the housing development fund company, either (i) the apartment resale
19 requirement of paragraph b of subdivision one of section five hundred
20 seventy-six of this article; or (ii) a requirement that the income of a
21 purchaser of an apartment not exceed one hundred sixty-five percent of
22 the area median income, as determined from time to time by the United
23 States department of housing and urban development. As a condition of
24 the continuing receipt of such tax exemption and tax abatement, the
25 housing development fund company shall file an annual certification with
26 the commissioner or supervisory agency that the company has complied
27 with the requirements of this section. Such certification shall be
28 limited to a listing of apartments sold or transferred in the prior
29 twelve months and a statement that the income of the purchaser or trans-
30 feree of the apartment complies with the income requirement of this
31 paragraph, except that a transferee who is a member of the transferor's
32 family or household need not comply with such requirement.

33 (c) (i) The commissioner or supervisory agency may review and audit
34 the sales records of a housing development fund company in order to
35 ensure compliance with the requirements of this section. The commission-
36 er or supervisory agency shall have the authority to suspend or revoke
37 the tax exemption and tax abatement applicable to any housing develop-
38 ment fund company, in proportion to the percentage of dwelling units at
39 a housing development fund corporation not in compliance with this
40 section, if the commissioner determines that the company has willfully
41 violated the provisions of this section, so long as the housing develop-
42 ment fund company is provided with prior written notification as to each
43 specific instance of noncompliance and to which dwelling unit such non-
44 compliance is alleged.

45 (ii) A housing development fund company shall have the right to rebut
46 allegations of a willful violation of this section, and also to charge
47 and collect additional monies from any shareholder, including successors
48 and assigns, found by the commissioner or supervisory agency to have
49 willfully not complied with the requirements of this section so as to
50 recover expenses for all losses of tax exemptions and tax abatements and
51 so as to recover all expenses associated with responding to such allega-
52 tions by the commissioner or supervisory agency.

53 (iii) Any annual certification submitted pursuant to this section that
54 has been accepted for filing and that has not been subject to a suspen-
55 sion or revocation action by the commissioner or supervisory agency for

a period of five years shall be deemed correct and shall not be subject to further audit or review by the commissioner or supervisory agency.

(d) The conditions set forth in paragraph (b) of this subdivision shall be the sole and exclusive conditions governing the eligibility of a housing development fund company described in subparagraph (iii) of paragraph (a) of this subdivision for receipt of the tax exemption and tax abatement authorized in paragraph (e) of this subdivision.

(e) For each eligible housing development fund company, the annual amount of the tax exemption and tax abatement authorized pursuant to this section shall be the greater of:

(i) the net reduction in real estate taxes resulting from the tax exemption heretofore granted by the local legislative body pursuant to the provisions of this section, equivalent to a cap on assessed value per apartment of thirteen thousand two hundred ninety-five dollars in the two thousand twenty-five--two thousand twenty-six tax year, and which shall increase by two and a half percent per year in each subsequent tax year; or

(ii) the net reduction in real estate taxes resulting from two hundred percent of the tax abatement for housing cooperatives authorized by section four hundred sixty-seven-a of the real property tax law.

(f) Where a municipality acts on behalf of another taxing jurisdiction in assessing real property for the purpose of taxation, or in levying taxes therefor, the action of the local legislative body of such municipality in granting such tax exemption shall have the effect of exempting the real property in such project from local and municipal taxes including school taxes, other than assessments for local improvements, levied by or in behalf of both such taxing jurisdictions.

[~~(e)~~] (g) The local legislative body of any municipality may grant an exemption under paragraph (a) of this subdivision to the real property of a project of any entity to which it is authorized to make a loan pursuant to section five hundred seventy-six-c of this article.

[~~(d)~~] (h) In a city having a population of one million or more, within one hundred twenty days following receipt of a written submission from the supervising agency requesting a tax exemption pursuant to paragraph (a) of this subdivision for the real property containing the project of a housing development fund company, the local legislative body shall approve or disapprove by resolution the requested tax exemption. If the local legislative body fails to take such action within one hundred twenty days following receipt of such written submission from such supervising agency, then the tax exemption requested by the supervising agency shall be deemed approved pursuant to paragraph (a) of this subdivision.

§ 5. Paragraph (b) of subdivision 1 of section 577-b of the private housing finance law, as amended by chapter 225 of the laws of 2004, is amended to read as follows:

(b) on January first, two thousand [~~two~~] twenty-five, had outstanding municipal real estate taxes relating to any period prior to January first, two thousand [~~one~~] twenty-four.

§ 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.