

STATE OF NEW YORK

3492--A

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2025-2026 Regular Sessions

IN SENATE

January 28, 2025

Introduced by Sens. MAY, HARCKHAM, HOYLMAN-SIGAL, JACKSON, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law and the public housing law, in relation to enacting the "sustainable affordable housing and sprawl prevention act"

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

1 Section 1. This act shall be known and may be cited as the "sustainable affordable housing and sprawl prevention act".

2
3 § 2. The environmental conservation law is amended by adding a new
4 section 8-0119 to read as follows:

5 § 8-0119. Certain actions exempt or subject to limited review.

6 1. Exempt actions for construction of residential dwellings. (a)
7 Notwithstanding any law, rule or regulation to the contrary, qualifying
8 actions with respect to the construction of a new multiple dwelling or
9 more than one contiguous multiple dwellings, including building permits,
10 variances, subdivision approvals, site plan approvals, and zoning text
11 amendments, that meet the following thresholds shall be automatically
12 determined not to have a significant impact on the environment and shall
13 be exempt from any environmental review requirements under this article
14 or any rules or regulations promulgated pursuant hereto:

15 (i) fewer than ten total residential units in municipalities that have
16 not adopted zoning or subdivision regulations;

17 (ii) fewer than fifty total residential units in a building in which
18 no more than twenty percent of the floor area consists of commercial or
19 community facility uses, not to be connected at the commencement of

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

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1 habitation to existing community or public water and sewerage systems
2 including sewage treatment works;

3 (iii) in a city, town, or village having a population of ninety thou-
4 sand persons or less, fewer than two hundred total residential units in
5 a building in which no more than twenty percent of the floor area
6 consists of commercial or community facility uses to be connected at the
7 commencement of habitation to existing community or public water and
8 sewerage systems including sewage treatment works;

9 (iv) in a city, town, or village having a population of greater than
10 ninety thousand but less than one million, fewer than five hundred total
11 residential units in a building in which no more than twenty percent of
12 the floor area consists of commercial or community facility uses to be
13 connected at the commencement of habitation to existing community or
14 public water and sewerage systems including sewage treatment works; or

15 (v) in a city having a population of one million or more persons,
16 fewer than one thousand total residential units in a building in which
17 no more than twenty percent of the floor area consists of commercial or
18 community facility uses to be connected at the commencement of habita-
19 tion to existing community or public water and sewerage systems includ-
20 ing sewage treatment works.

21 (b) To be determined as a "qualifying action" under paragraph (a) of
22 this subdivision, such multiple dwelling shall:

23 (i) be located in a census tract defined as an urbanized area or an
24 urban cluster by the federal Census Bureau or in a village with a mini-
25 imum population density of one thousand people per square mile;

26 (ii) be located on previously disturbed land;

27 (iii) qualify as affordable housing, as shall be determined by the
28 division of housing and community renewal, relative to the municipality
29 or county, as shall be determined by the division of housing and commu-
30 nity renewal, in which it is located;

31 (iv) not be located in an area:

32 (1) projected to experience flooding in the event of sea level rise
33 greater than or equal to the high-medium projection by year twenty-one
34 hundred as set forth in regulations promulgated pursuant to section
35 3-0319 of this chapter, or any other science-based projection of future
36 sea level conditions deemed satisfactory by the commissioner;

37 (2) designated as a special flood hazard area by the federal emergency
38 management agency, provided that this provision shall not apply to muni-
39 cipalities that have adopted a building code that mitigates flood hazard
40 risk by requiring new construction to be elevated above the base flood
41 elevation as defined by the federal emergency management agency; or

42 (3) designated as a critical environmental area by the department;

43 (v) complete a Phase I Environmental Site Assessment in accordance
44 with all appropriate inquiries regulations of the United States Environ-
45 mental Protection Agency under the federal Comprehensive Environmental
46 Response, Compensation and Liability Act (Title forty of the Code of
47 Federal Regulations, Section 312), and complete testing for lead water
48 and paint, asbestos, and radon, the results of which shall be submitted
49 by the proposed developer of such multiple dwelling to the local agency
50 responsible for approving or denying the application for such multiple
51 dwelling. If the Phase I Environmental Site Assessment identifies condi-
52 tions indicative of releases or threatened releases of hazardous
53 substances, the proposed developer shall conduct such physical sampling
54 and testing as is necessary to ascertain the presence of hazardous
55 substances. If such testing finds contamination that exceeds acceptable
56 levels of contaminants for residential use as set forth in regulations

1 promulgated pursuant to titles thirteen and fourteen of article twenty-
2 seven and title five of article fifty-six of this chapter and related
3 regulations governing environmental remediation, the proposed project
4 shall either (1) obtain a written signoff from the lead agency that no
5 further environmental investigation is required or that a plan to
6 address any hazardous materials is acceptable; or (2) consent that the
7 development site will be developed pursuant to a regulatory agreement
8 with a government agency with appropriate protections and development
9 oversight requirements. Nothing in this subparagraph shall be deemed to
10 exempt any such site from applicable provisions of article twenty-seven
11 or title five of article fifty-six of this chapter, or other laws
12 governing hazardous waste and the presence of hazardous substances;

13 (vi) receive a written certification from a qualified environmental
14 professional, as such term shall be defined by the department in regu-
15 lation, that the construction of such multiple dwelling will not violate
16 any state wetland laws under articles twenty-four and twenty-five of
17 this chapter, or any rules or regulations promulgated thereto;

18 (vii) receive a written certification from a qualified professional,
19 as such term shall be defined by the department in regulation, that
20 construction of such multiple dwelling, as proposed, will not violate
21 any drinking water laws under article eleven of the public health law,
22 or any rules or regulations promulgated thereto; and

23 (viii) receive certification by an architect licensed by the state
24 that the building has been designed to meet one or more of the following
25 building standards:

26 (1) the Leadership in Energy and Environmental Design Building Rating
27 System (LEED) published by the United States Green Building Council for
28 the category of certified gold, at minimum, as determined by a LEED
29 accredited professional;

30 (2) enterprise green communities review and certification;

31 (3) Passive House Institute Passive House certification;

32 (4) fossil fuel free building standards under subdivisions six and
33 seven of section 11-104 of the energy law and subdivision nineteen of
34 section three hundred seventy-eight of the executive law; or

35 (5) in municipalities that have opted in, the New York Stretch Code as
36 developed by the New York state energy research and development authori-
37 ty.

38 2. Actions with respect to construction of multiple dwellings subject
39 to limited review. (a) Notwithstanding any law, rule or regulation to
40 the contrary, actions with respect to the construction of new multiple
41 dwellings that are not exempt from environmental review under subdivi-
42 sion one of this section, and that are qualifying actions, shall not be
43 subject to any environmental review standards under this article, or
44 rules or regulations promulgated thereto, that do not consist of core
45 environmental concerns, as such term shall be defined by the department
46 in regulation. Topics of review that shall be exempt under this subdivi-
47 sion as failing to meet the standard of core environmental concerns
48 shall include, but not be limited to, casting of shading or shadows,
49 impacts on views from neighboring buildings, consistency with community
50 character, impacts on neighborhood character, and the resources of local
51 school systems; except that, in the case of a disadvantaged community,
52 such topics of concern may include the resources of local school
53 systems.

54 (b) To be determined as a "qualifying action" under paragraph (a) of
55 this subdivision, the proposed multiple dwelling shall:

1 (i) be located in a census tract defined as an urbanized area or an
2 urban cluster by the federal Census Bureau;

3 (ii) be located on previously disturbed land;

4 (iii) qualify as affordable housing, as shall be determined by the
5 division of housing and community renewal, relative to the municipality
6 or county, as shall be determined by the division of housing and commu-
7 nity renewal, in which it is located; and

8 (iv) not be located in an area:

9 (1) projected to experience flooding in the event of sea level rise
10 greater than or equal to the high-medium projection by year twenty-one
11 hundred as set forth in regulations promulgated pursuant to section
12 3-0319 of this chapter, or any other science-based projection of future
13 sea level conditions deemed satisfactory by the commissioner;

14 (2) designated as a special flood hazard area by the federal emergency
15 management agency, provided that this provision shall not apply to muni-
16 cipalities that have adopted a building code that mitigates flood hazard
17 risk by requiring new construction to be elevated above the base flood
18 elevation as defined by the federal emergency management agency ; or

19 (3) designated as a critical environmental area by the department.

20 3. Mandatory review. Every action that is a qualifying action under
21 subdivision one or two of this section shall be subjected to a determi-
22 nation by the local permitting authority of whether such action is
23 exempt under subdivision one of this section, and if such action is not
24 exempt under subdivision one of this section, whether such action is
25 exempt under subdivision two of this section. If, after sixty days, the
26 local agency responsible for approving or denying the application for
27 such multiple dwelling has failed to return such a determination, the
28 applicant may appeal to the division of housing and community renewal
29 for a determination, and in such case the division shall render a deter-
30 mination within sixty days of receipt of the application.

31 4. Historic sites. An action otherwise exempt from environmental
32 review requirements under subdivision one of this section may be
33 required to undergo environmental review pursuant to this article or the
34 rules or regulations promulgated pursuant hereto on the basis that the
35 multiple dwelling would be constructed wholly or partially within a
36 historic site, provided, however that such action affects a contributing
37 property within such historic site, and provided further that such envi-
38 ronmental review is limited in its scope to such contributing property.
39 An action shall not be required to undergo an environmental review under
40 this subdivision solely on the basis that such the proposed multiple
41 dwelling would be substantially contiguous to a historic site, or
42 located in a neighborhood containing historic sites.

43 5. Wastewater treatment and stormwater management. (a) An action
44 exempt from environmental review requirements under subdivision one or
45 two of this section may provide concept plans to either the appropriate
46 local governmental entity or the department that demonstrate that the
47 multiple dwelling will have adequate wastewater treatment to accommodate
48 the completed multiple dwelling for no less than thirty years. The
49 department shall establish a method by which developers of proposed
50 multiple dwellings may submit such concept plans pursuant to this para-
51 graph. Upon submission of such concept plans, the local governmental
52 entity or the department, as applicable, shall approve or deny such
53 concept wastewater treatment plans no later than thirty days after
54 submission of such plans.

1 (b) An action exempt from environmental review requirements under
2 subdivision one or two of this section shall be required to maintain
3 compliance with all applicable stormwater regulations.

4 6. Disadvantaged communities. The department shall require, by rule or
5 regulation, that qualifying actions with respect to the construction of
6 new multiple dwellings shall not:

7 (a) contribute more than a de minimis amount of pollution or any
8 disproportionate pollution burden after the completion of construction;
9 or

10 (b) directly displace low-income households by reducing, in aggre-
11 gate, their residential housing opportunities in a disadvantaged commu-
12 nity.

13 7. Authority of the commissioner. The commissioner shall be authorized
14 to consult with any other state or local agency and to promulgate and/or
15 amend any rules and/or regulations such commissioner shall deem neces-
16 sary for the implementation of the provisions of this section; provided,
17 however, that the department and the division of housing and community
18 renewal shall jointly promulgate such rules and regulations as they
19 shall deem necessary for the implementation of subdivision six of this
20 section.

21 8. The proposed developer shall promptly provide to the department and
22 to the local agency, and shall promptly post on a publicly accessible
23 website, all certifications for the proposed developer's project that
24 are required by this section, and the Phase I site assessment and the
25 results of all testing required under subparagraph (v) of paragraph (b)
26 of subdivision one of this section.

27 § 3. Section 8-0105 of the environmental conservation law is amended
28 by adding six new subdivisions 11, 12, 13, 14, 15 and 16 to read as
29 follows:

30 11. "Historic site" means a historic building, structure, facility,
31 site or district, or prehistoric site that is listed on the National
32 Register of Historic Places (36 CFR Parts 60 and 63), or that is listed
33 on the state register of historic places or that has been determined by
34 the commissioner of parks, recreation and historic preservation to be
35 eligible for listing on the state register of historic places pursuant
36 to section 14.07 or 14.09 of the parks, recreation and historic preser-
37 vation law, or historic buildings listed as landmarks by the New York
38 city landmarks preservation commission.

39 12. "Contributing property" means a building, structure, facility, or
40 site located within a historic site or district that wholly or partially
41 contributes to such designation as a historic site.

42 13. "Dwelling" means any building or structure or portion thereof
43 which is occupied or intended to be occupied in whole or in part as the
44 home, residence, or sleeping place of one or more human beings.

45 14. "Multiple dwelling" means a dwelling that is either rented,
46 leased, let or hired out, or sold, to be occupied, or is occupied as the
47 residence or home of four or more separate individuals or groups of
48 individuals living independently of each other, including, but not
49 limited to, apartments, condominiums, and townhouses. A "multiple dwell-
50 ing" shall not be deemed to include a class B multiple dwelling as
51 defined by section four of the multiple dwelling law, or a hospital,
52 convent, monastery, residential care facility, or a building used wholly
53 for commercial purposes.

54 15. "Residential unit" means a room or group of rooms within a multi-
55 ple dwelling that is designated as the living quarters for an individual

1 or group of individuals living independently from other individuals
2 occupying such multiple dwelling.

3 16. "Previously disturbed land" shall mean a parcel or lot of land
4 that was occupied or formerly occupied by a building or otherwise
5 improved or utilized at least one year prior to the effective date of
6 this subdivision, and was not most recently used for commercial agricul-
7 tural purposes.

8 § 4. Section 600 of the public housing law is amended by adding a new
9 subdivision 6 to read as follows:

10 6. A covered housing agency in this state shall be subject, as appli-
11 cable, to the provisions of article eight of the environmental conserva-
12 tion law and any rules and/or regulations promulgated thereto.

13 § 5. This act shall take effect on the one hundred eightieth day after
14 it shall have become a law. Effective immediately, the addition, amend-
15 ment and/or repeal of any rule or regulation necessary for the implemen-
16 tation of this act on its effective date are authorized to be made and
17 completed on or before such effective date.