

4523

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. FITZPATRICK -- read once and referred to the
Committee on Housing

AN ACT to amend the private housing finance law, in relation to extend-
ing provisions relating to affordable housing development loans to all
municipalities of the state of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1150 of the private housing finance law, as added
2 by chapter 639 of the laws of 1989, is amended to read as follows:
3 S 1150. Statement of legislative findings and purposes. It is hereby
4 found and declared that there exists in [the city of] New York STATE a
5 seriously inadequate supply of safe, sanitary and affordable dwelling
6 accommodations for persons and families for whom the ordinary operations
7 of private enterprise cannot provide such accommodations. The legisla-
8 ture further finds and declares that [the city of New York] ANY MUNICI-
9 PALITY should be permitted to assist the private sector in the develop-
10 ment of dwelling accommodations affordable to such persons through
11 establishment of a program to provide monies to make the construction of
12 dwelling accommodations more affordable. It is recognized that currently
13 [the city of New York assists] MUNICIPALITIES ASSIST the development of
14 such housing accommodations through the provisions of articles fifteen
15 and sixteen of the general municipal law which permit such assistance on
16 [city-owned] MUNICIPALLY-OWNED sites which are sold to private develop-
17 ers or non-profit groups for construction of housing. It is intended
18 that [the city of New York] ANY MUNICIPALITY also be authorized to
19 expend monies to assist housing development on sites which are not
20 [city-owned] MUNICIPALLY-OWNED. Accordingly, the legislature enacts
21 this article to provide such authorization and to encourage the develop-
22 ment of additional affordable dwelling accommodations.

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

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1 S 2. Subdivisions 1, 6 and 9 of section 1151 of the private housing
2 finance law, as added by chapter 639 of the laws of 1989, are amended to
3 read as follows:

4 1. "Eligible site" shall mean any real property [in the city of New
5 York] WITHIN A MUNICIPALITY which the SUPERVISING agency determines to
6 be located in an area which is blighted or deteriorated or has a blight-
7 ing influence on the surrounding area or is in danger of becoming a slum
8 or blighted area because of neighborhood conditions indicating an
9 inability or unwillingness of the private sector to invest in housing in
10 such area.

11 6. "Loan" shall mean a first mortgage loan made by a private lender in
12 participation with [the city of New York] A MUNICIPALITY to a sponsor
13 for the purpose of construction of an eligible project including a loan
14 in which the portion of the loan funded by the agency is represented by
15 a separate note and mortgage.

16 9. ["Agency"] "SUPERVISING AGENCY" shall mean [the department of hous-
17 ing preservation and development of the city of New York or any succes-
18 sor thereto] ANY OFFICER, BOARD, COMMISSION, DEPARTMENT, OR OTHER AGENCY
19 OF THE MUNICIPALITY, OR THE AUTHORITY OR ANY OTHER PUBLIC AUTHORITY,
20 DESIGNATED BY THE LOCAL LEGISLATIVE BODY TO CARRY OUT THE FUNCTIONS
21 VESTED IN THE AGENCY UNDER THIS ARTICLE OR DELEGATED TO THE AGENCY BY
22 THE LOCAL LEGISLATIVE BODY IN ORDER TO CARRY OUT THE PURPOSES AND
23 PROVISIONS OF THIS ARTICLE; EXCEPT THAT IN THE CITY OF NEW YORK SHALL BE
24 THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT.

25 S 3. Subdivisions 1, 2, 4, 5, 6, 7, 8, 10, 11, 12 and 13 of section
26 1152 of the private housing finance law, subdivisions 1, 5, 6, 7, 8, 10
27 and 11 as added by chapter 639 of the laws of 1989, subdivision 2 as
28 amended by chapter 567 of the laws of 1993, subdivision 4 as amended and
29 subdivision 13 as added by chapter 241 of the laws of 1998, subdivision
30 12 as added by chapter 400 of the laws of 1994, and paragraph e of
31 subdivision 12 as amended by chapter 118 of the laws of 2003, are
32 amended to read as follows:

33 1. Notwithstanding the provisions of any general, special or local
34 law, one or more private lenders and [the city of New York] A MUNICI-
35 PALITY, acting through [the] ITS SUPERVISING agency shall have the power
36 to participate and invest in making loans to sponsors for the
37 construction of eligible projects. Such loans may include such amounts
38 as may be required for site acquisition. Each such participation loan
39 shall be secured by a bond or note and single participating mortgage or
40 by separate bonds or notes and mortgages upon the eligible project. Such
41 bond or note and mortgage or bonds or notes or mortgages may contain
42 such other terms and provisions not inconsistent with the provisions of
43 this article as the SUPERVISING agency may deem necessary or desirable.

44 2. a. The portion of such loan funded by the SUPERVISING agency shall
45 not exceed an amount equal to sixty percent of the actual total develop-
46 ment cost of an eligible project. The SUPERVISING agency may enter into
47 an agreement with a private lender to deposit its share of a loan with
48 the private lender to be advanced by the private lender. The portion of
49 the loan funded by the SUPERVISING agency may be equal to or subordinate
50 in lien to the portion of the loan funded by the private lender and may
51 contain such terms with respect to interest rate, if any, rate of amor-
52 tization of principal, if any, and time of payment of interest and prin-
53 cipal as determined by the SUPERVISING agency. The SUPERVISING agency
54 may make provision either in the mortgage or mortgages or by separate
55 agreement for the performance by the private lender of such services as
56 are generally performed by a banking institution which itself holds a

1 mortgage, including, without limitation, construction loan advances,
2 construction supervision, initiation of foreclosure proceedings,
3 procurement of insurance, and all other matters in connection with the
4 financing, supervision, regulation and audit of any such loan to any
5 such eligible project.

6 b. Notwithstanding any inconsistent provision of this article, the
7 portion of such loan funded by the SUPERVISING agency may be one hundred
8 percent of the actual total development cost of an eligible project if
9 the SUPERVISING agency determines that private participation is infeasible.
10

11 4. If the eligible project is to consist of one to four unit dwelling
12 accommodations or cooperative or condominium units, the SUPERVISING
13 agency's share of the loan may be converted after completion of
14 construction into mortgages on such dwelling accommodations or condominium
15 units or financing statements filed with respect to such cooperative
16 shares, provided such units or such cooperative shares are purchased by
17 persons of eligible income. Such mortgages may provide that they will
18 automatically be reduced to zero over a period of continuous owner-occupancy
19 of the housing accommodations assisted by such loan. Notwithstanding
20 such provision as contained in such mortgage, the loan shall be
21 reduced to zero only if, prior to or simultaneously with delivery of
22 such mortgage, the SUPERVISING agency made a written determination that
23 such reduction would be necessary to ensure the continued affordability
24 or economic viability of the eligible project. Such written determination
25 shall document the basis upon which the loan was determined to be
26 eligible for evaporation. Such period of continuous owner-occupancy
27 shall not be less than fifteen years.

28 5. If the eligible project is to consist of one to four unit dwelling
29 accommodations or cooperative or condominium units, the SUPERVISING
30 agency shall require that the dwelling units be offered only to bona
31 fide purchasers who intend to occupy a unit as their principal place of
32 residence; provided, however, that in the case of two to four unit
33 dwelling accommodations the bona fide purchaser may occupy only a single
34 unit as a principal place of residence. If the purchaser ceases to occupy
35 the unit as a principal place of residence, the agency may provide
36 for recapture of all or a portion of the SUPERVISING agency's share of
37 the loan.

38 6. If the eligible project is a rental project, the SUPERVISING agency's
39 share of the loan may be converted after completion of construction
40 into a non-interest bearing, non-amortizing thirty year loan payable at
41 the end of its term, provided that such loan shall be also payable out
42 of profits upon any sale or refinancing of the project prior to the end
43 of such thirty year period. The sponsor or any subsequent owner or
44 owners of such a project shall agree to rent such units only to persons
45 of eligible income for such thirty year period; and IF IN THE CITY OF
46 NEW YORK: shall agree that all units shall be subject to the rent
47 stabilization law of nineteen hundred sixty-nine, as amended, for a
48 period of thirty years after initial occupancy, unless converted to a
49 cooperative or condominium pursuant to subdivision eight of this
50 section. At the end of such period each unit shall continue to be
51 subject to such law thereafter until the first vacancy occurs at which
52 time the unit shall be decontrolled. Initial rentals for all rental
53 units shall be set by the SUPERVISING agency.

54 7. [If] IN THE CITY OF NEW YORK, IF the eligible project is a rental
55 project annual profits shall be limited to an amount set by the SUPER-
56 VISING agency for as long as the loan is outstanding. Excess profits

1 shall be used to establish project reserves, provide capital improve-
2 ments or reduce the principal amount of the SUPERVISING agency's loan,
3 as determined by the SUPERVISING agency.

4 8. If the eligible project is a rental project, no conversion to a
5 cooperative or condominium shall be permitted for a period of twenty
6 years after initial occupancy, and unless (i) the SUPERVISING agency's
7 share of the loan is prepaid upon such conversion, (ii) the conversion
8 shall be done pursuant to section three hundred fifty-two-eeee of the
9 general business law as a non-eviction plan, and (iii) apartments occu-
10 pied by non-purchasing tenants continue to be subject to the rent
11 stabilization law of nineteen hundred sixty-nine as amended, until the
12 occurrence of a vacancy.

13 10. Notwithstanding the provisions of any general, special or local
14 law or charter, the SUPERVISING agency shall have power, without solici-
15 ting competing bids, to contract with any sponsor or to make provision
16 in a loan for the construction or reconstruction of any site improve-
17 ments located in the public right-of-way which are necessary for the
18 development of an eligible project. Such site improvements may include,
19 but shall not be limited to, streets, sidewalks, lighting fixtures, and
20 water and sewer lines.

21 11. No loan shall be made pursuant to the provisions of this article
22 unless the SUPERVISING agency finds that: (a) the construction of the
23 eligible project does not directly displace current low and moderate
24 income residents of the eligible site; (b) the eligible project lever-
25 ages private and other public investment, if any, so as to reduce the
26 amount of assistance provided pursuant to this article to the minimal
27 amount which is necessary for construction of the eligible project; (c)
28 the eligible project will be built by a private developer/builder who
29 has agreed to limit its profit in accordance with a formula satisfactory
30 to the SUPERVISING agency; (d) the eligible project will provide assist-
31 ance to an area which is blighted or deteriorated or has a blighting
32 influence on the surrounding area, or is in danger of becoming a slum or
33 a blighted area because of neighborhood conditions indicating an inabil-
34 ity or unwillingness of the private sector to cause the type of
35 construction for which a loan is to be provided; and (e) the eligible
36 project will make home ownership or rental housing affordable to persons
37 who cannot presently afford the housing available based upon the ordi-
38 nary unaided operation of private enterprise.

39 12. a. The SUPERVISING agency may make non-interest bearing advances
40 to sponsors to defray the pre-development costs of eligible projects in
41 accordance with the provisions of this chapter.

42 b. No such advances shall be made unless the SUPERVISING agency finds
43 that: (i) the sponsor proposes to finance the eligible project in whole
44 or in part by a loan granted pursuant to this article or that the
45 project, if otherwise financed, will provide housing for persons or
46 families of low income, and that such project is otherwise consistent
47 with the purposes of this article; (ii) the project site is suitable,
48 there is a need for the housing type proposed in the area to be served
49 and the project is feasible; and (iii) it is reasonable to anticipate
50 that financing will be obtained and the SUPERVISING agency makes a find-
51 ing to that effect.

52 c. No such advances may be made to a sponsor unless such sponsor
53 enters into an agreement with the SUPERVISING agency which provides that
54 such sponsor shall be regulated with respect to rents, profits, divi-
55 dends and disposition of its property or franchise, in accordance with
56 the provisions of this article.

1 d. An advance granted pursuant to this section shall be used only to
2 defray the pre-development costs of eligible projects. For purposes of
3 this subdivision, the term pre-development costs shall include, but
4 shall not be limited to: the reasonable and necessary costs for plan-
5 ning, site preparation, developing architectural drawings and conducting
6 engineering and environmental studies, but shall not include acquisition
7 of land or buildings, drainage and landscaping of vacant land,
8 construction of new buildings or the reconstruction or rehabilitation of
9 existing buildings.

10 e. Each such advance shall be repaid in full to the SUPERVISING agency
11 by the sponsor. Such repayment shall be made upon receipt by the sponsor
12 or its successor in interest of the proceeds of its mortgage or
13 construction loan for the eligible project, unless the SUPERVISING agen-
14 cy extends the period for the repayment of such advances. In no event
15 shall the time of repayment be extended to a date later than the date of
16 final advance of funds pursuant to such mortgage or construction loan.
17 Notwithstanding this paragraph, the SUPERVISING agency may reduce such
18 advance to zero over a period of continued compliance with the SUPERVIS-
19 ING agency's agreement with the sponsor pursuant to paragraph c of this
20 subdivision if the SUPERVISING agency has made a written determination
21 that such reduction would be necessary to ensure the continued afforda-
22 bility or economic viability of the eligible project. Such written
23 determination shall document the basis upon which the SUPERVISING agen-
24 cy's non-interest bearing advance was determined eligible for evapo-
25 ration.

26 f. If the SUPERVISING agency, in its discretion, determines at any
27 time that mortgage or construction financing for the eligible project
28 may not be obtained, then all advances made to the sponsor pursuant to
29 this subdivision shall become immediately due and payable upon the
30 demand of the SUPERVISING agency.

31 13. If the eligible project is a rental project, the bond or note and
32 mortgage or bonds or notes or mortgages issued by the sponsor of any
33 eligible project to secure a participation loan may provide that the
34 city's portion of such loan shall be reduced to zero commencing on the
35 fifteenth year after the execution of such bond or note and mortgage or
36 bonds or notes or mortgages, provided that, as of the date of any such
37 reduction, the eligible project has been and continues to be owned and
38 operated in a manner consistent with a regulatory agreement with the
39 city. Notwithstanding such provision as contained in the bond or note
40 and mortgage or bonds or notes or mortgages, the loan shall be reduced
41 to zero only if, prior to or simultaneously with delivery of such bond
42 or note and mortgage or bonds or notes or mortgages, the SUPERVISING
43 agency made a written determination that such reduction would be neces-
44 sary to ensure the continued affordability or economic viability of the
45 eligible project. Such written determination shall document the basis
46 upon which the loan was determined to be eligible for evaporation.

47 S 4. Subdivision 2 of section 1152 of the private housing finance law,
48 as added by chapter 639 of the laws of 1989, is amended to read as
49 follows:

50 2. The portion of such loan funded by the SUPERVISING agency shall not
51 exceed an amount equal to sixty percent of the actual total development
52 cost of an eligible project. The SUPERVISING agency may enter into an
53 agreement with a private lender to deposit its share of a loan with the
54 private lender to be advanced by the private lender. The portion of the
55 loan funded by the SUPERVISING agency may be equal to or subordinate in
56 lien to the portion of the loan funded by the private lender and may

1 contain such terms with respect to interest rate, if any, rate of amor-
2 tization of principal, if any, and time of payment of interest and prin-
3 cipal as determined by the SUPERVISING agency. The SUPERVISING agency
4 may make provision either in the mortgage or mortgages or by separate
5 agreement for the performance by the private lender of such services as
6 are generally performed by a banking institution which itself holds a
7 mortgage, including, without limitation, construction loan advances,
8 construction supervision, initiation of foreclosure proceedings,
9 procurement of insurance, and all other matters in connection with the
10 financing, supervision, regulation and audit of any such loan to any
11 such eligible project.

12 S 5. Section 1153 of the private housing finance law, as added by
13 chapter 639 of the laws of 1989, is amended to read as follows:

14 S 1153. General provisions. 1. The SUPERVISING agency shall issue and
15 promulgate rules and regulations for the administration of this article.

16 2. If any clause, sentence, paragraph, section or part of this act
17 shall be adjudged by any court of competent jurisdiction to be invalid,
18 such [judgement] JUDGMENT shall not affect, impair or invalidate the
19 remainder thereof, but shall be confined in its operation to the clause,
20 sentence, paragraph, section or part thereof directly involved in the
21 controversy in which such judgment shall have been rendered.

22 S 6. This act shall take effect on the ninetieth day after it shall
23 have become a law; provided, however, that the amendments to subdivision
24 2 of section 1152 of the private housing finance law, made by section
25 three of this act shall be subject to the expiration and reversion of
26 such subdivision pursuant to section 4 of chapter 567 of the laws of
27 1993, as amended, when upon such date the provisions of section four of
28 this act shall take effect.