S T A T E O F N E W Y O R K

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 extending 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1150 of the private housing finance law, as added by chapter 639 of the laws of 1989, is amended to read as follows:

S 1150. Statement of legislative findings and purposes. It is hereby found and declared that there exists in [the city of] New York STATE a seriously inadequate supply of safe, sanitary and affordable dwelling accommodations for persons and families for whom the ordinary operations of private enterprise cannot provide such accommodations. The legislature further finds and declares that [the city of New York] ANY MUNICIPALITY should be permitted to assist the private sector in the development of dwelling accommodations affordable to such persons through establishment of a program to provide monies to make the construction of dwelling accommodations more affordable. It is recognized that currently [the city of New York assists] MUNICIPALITIES ASSIST the development of such housing accommodations through the provisions of articles fifteen and sixteen of the general municipal law which permit such assistance on [city-owned] MUNICIPALLY-OWNED sites which are sold to private developers or non-profit groups for construction of housing. It is intended that [the city of New York] ANY MUNICIPALITY also be authorized to expend monies to assist housing development on sites which are not [city-owned] MUNICIPALLY-OWNED. Accordingly, the legislature enacts this article to provide such authorization and to encourage the development 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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S 2. Subdivisions 1, 6 and 9 of section 1151 of the private housing finance law, as added by chapter 639 of the laws of 1989, are amended to read as follows:

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

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

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

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

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

2. a. The portion of such loan funded by the SUPERVISING agency shall not exceed an amount equal to sixty percent of the actual total development cost of an eligible project. The SUPERVISING agency may enter into an agreement with a private lender to deposit its share of a loan with the private lender to be advanced by the private lender. The portion of the loan funded by the SUPERVISING agency may be equal to or subordinate in lien to the portion of the loan funded by the private lender and may contain such terms with respect to interest rate, if any, rate of amortization of principal, if any, and time of payment of interest and principal as determined by the SUPERVISING agency. The SUPERVISING agency may make provision either in the mortgage or mortgages or by separate agreement for the performance by the private lender of such services as are generally performed by a banking institution which itself holds a

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

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

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

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

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

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

shall be used to establish project reserves, provide capital improvements or reduce the principal amount of the SUPERVISING agency's loan, as determined by the SUPERVISING agency.

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

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

11. No loan shall be made pursuant to the provisions of this article unless the SUPERVISING agency finds that: (a) the construction of the eligible project does not directly displace current low and moderate income residents of the eligible site; (b) the eligible project leverages private and other public investment, if any, so as to reduce the amount of assistance provided pursuant to this article to the minimal amount which is necessary for construction of the eligible project; (c) the eligible project will be built by a private developer/builder who has agreed to limit its profit in accordance with a formula satisfactory to the SUPERVISING agency; (d) the eligible project will provide assistance to an area which is blighted or deteriorated or has a blighting influence on the surrounding area, or is in danger of becoming a slum or a blighted area because of neighborhood conditions indicating an inability or unwillingness of the private sector to cause the type of construction for which a loan is to be provided; and (e) the eligible project will make home ownership or rental housing affordable to persons who cannot presently afford the housing available based upon the ordinary unaided operation of private enterprise.

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

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

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

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

e. Each such advance shall be repaid in full to the SUPERVISING agency by the sponsor. Such repayment shall be made upon receipt by the sponsor or its successor in interest of the proceeds of its mortgage or construction loan for the eligible project, unless the SUPERVISING agency extends the period for the repayment of such advances. In no event shall the time of repayment be extended to a date later than the date of final advance of funds pursuant to such mortgage or construction loan. Notwithstanding this paragraph, the SUPERVISING agency may reduce such advance to zero over a period of continued compliance with the SUPERVISING agency's agreement with the sponsor pursuant to paragraph c of this subdivision if the SUPERVISING agency has made a written determination that such reduction would be necessary to ensure the continued affordability or economic viability of the eligible project. Such written determination shall document the basis upon which the SUPERVISING agency's non-interest bearing advance was determined eligible for evaporation.

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

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

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

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

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

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

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

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

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