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

3067--A

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sen. OPPENHEIMER -- 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

AN ACT to amend the private housing finance law, in relation to enacting the affordable rental housing siting act and providing for the repeal of such provisions upon expiration thereof

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

Section 1. The private housing finance law is amended by adding a new article 14 to read as follows:

ARTICLE 14

AFFORDABLE RENTAL HOUSING SITING

SECTION 680. SHORT TITLE.
681. DEFINITIONS.
682. AFFORDABLE RENTAL HOUSING LAND USE APPEALS.

S 680. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "AFFORDABLE RENTAL HOUSING SITING ACT".

S 681. DEFINITIONS. THE FOLLOWING TERMS, WHENEVER USED OR REFERRED TO IN THIS ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS A DIFFERENT MEANING CLEARLY APPEARS FROM THE CONTEXT.

1. "AFFORDABLE DWELLING UNIT." A HOUSING UNIT, THE RENTS OF WHICH ARE PROHIBITED BY COVENANTS OR PROGRAMMATIC REQUIREMENTS FROM EXCEEDING THIRTY PERCENT OF THE GROSS FAMILY INCOME OF PERSONS AND FAMILIES WHOSE INCOME IS EQUAL TO OR LESS THAN EIGHTY PERCENT OF THE AREA MEDIAN INCOME AS DETERMINED ANNUALLY BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ADJUSTED ONLY FOR FAMILY SIZE.

2. "AFFORDABLE RENTAL HOUSING DEVELOPMENT." A PROPOSED MULTI-FAMILY RENTAL HOUSING DEVELOPMENT (A) THAT IS ASSISTED OR (B) IN WHICH DEED COVENANTS OR RESTRICTIONS REQUIRE NOT LESS THAN TWENTY PERCENT OF THE DWELLING UNITS TO BE RENTED AT OR BELOW PRICES WHICH WILL PRESERVE THE UNITS AS AFFORDABLE RENTAL HOUSING FOR A PERIOD OF AT LEAST THIRTY YEARS FROM THE DATE OF INITIAL OCCUPANCY.

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

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3. "AFFORDABLE RENTAL HOUSING APPLICATION." AN APPLICATION FOR THE DEVELOPMENT OR CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING DEVELOPMENT MADE TO A MUNICIPAL PLANNING OR ZONING BOARD OR COMMISSION, OR LEGISLATIVE BODY.

4. "ASSISTED RENTAL HOUSING." RENTAL HOUSING WHICH IS RECEIVING OR WILL RECEIVE FINANCIAL ASSISTANCE UNDER ANY GOVERNMENTAL PROGRAM FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF AFFORDABLE HOUSING, OR PROJECT-BASED RENTAL ASSISTANCE UNDER SECTION 8 OF THE UNITED STATES HOUSING ACT OF 1937, AS AMENDED.

5. "MUNICIPALITY." ANY COUNTY, CITY, TOWN OR VILLAGE WITH A POPULATION GREATER THAN SEVEN THOUSAND FIVE HUNDRED AS DETERMINED BY THE MOST RECENT DECENNIAL FEDERAL CENSUS.

S 682. AFFORDABLE RENTAL HOUSING LAND USE APPEALS. 1. NOTWITHSTANDING ANY CONTRARY PROVISION OF THE GENERAL CITY LAW, THE VILLAGE LAW OR THE TOWN LAW, ANY PERSON OR ENTITY WHOSE AFFORDABLE RENTAL HOUSING APPLICATION IS DENIED OR IS APPROVED WITH RESTRICTIONS THAT WOULD HAVE A SUBSTANTIAL ADVERSE IMPACT ON THE ECONOMIC VIABILITY OF THE PROPOSED AFFORDABLE RENTAL HOUSING DEVELOPMENT MAY APPLY TO THE SUPREME COURT IN THE COUNTY WHERE THE PROPERTY WHICH IS THE SUBJECT OF THE APPLICATION IS LOCATED FOR RELIEF BY A PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, PROCEEDINGS INVOLVING AN AFFORDABLE RENTAL HOUSING APPLICATION SHALL PROCEED IN CONFORMANCE WITH THE PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES, INCLUDING THE TRIAL PREFERENCE PROVISIONS OF RULE THIRTY-FOUR HUNDRED THREE THEREOF.

2. IN A PROCEEDING UNDER THIS SECTION THE BURDEN SHALL BE ON THE MUNICIPAL BOARD, COMMISSION OR LEGISLATIVE BODY TO PROVE, BASED ON THE EVIDENCE IN THE RECORD COMPILED BEFORE SUCH BODY, THAT (A) THE DECISION OF SUCH BODY TO DENY APPROVAL OF AN AFFORDABLE RENTAL HOUSING APPLICATION AND THE REASONS, IF ANY, CITED FOR SUCH DECISION ARE SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE IN THE RECORD; (B) THE DECISION IS NECESSARY TO PROTECT SUBSTANTIAL PUBLIC INTERESTS IN HEALTH, SAFETY, THE ENVIRONMENT OR OTHER MATTERS WHICH THE BODY MAY LEGALLY CONSIDER; (C) SUCH PUBLIC INTERESTS OUTWEIGH THE NEED FOR AFFORDABLE RENTAL HOUSING; AND (D) SUCH PUBLIC INTERESTS CANNOT BE PROTECTED BY REASONABLE CHANGES TO THE AFFORDABLE RENTAL HOUSING DEVELOPMENT.

3. IF THE MUNICIPAL BODY SHALL FAIL TO MEET ITS BURDEN OF PROOF BY FAILING TO RATIONALLY MAKE THE REQUIRED DETERMINATIONS OR BY MAKING SUCH DETERMINATIONS IN AN ARBITRARY AND CAPRICIOUS FASHION, THE COURT SHALL WHOLLY OR PARTLY REVISE, MODIFY, REMAND OR REVERSE THE DECISION OF SUCH BODY IN A MANNER CONSISTENT WITH THE INTENT OF THIS ARTICLE AND THE RECORD BEFORE IT.

4. THE PROVISION OF THIS SECTION SHALL NOT BE APPLICABLE IF THE REAL PROPERTY WHICH IS THE SUBJECT OF THE APPLICATION IS LOCATED IN A MUNICIPALITY HAVING A POPULATION IN EXCESS OF ONE MILLION OR IN WHICH AT LEAST TEN PERCENT OR MORE OF ALL DWELLING UNITS ARE AFFORDABLE OR FIVE PERCENT OR MORE OF ALL RENTAL DWELLING UNITS ARE VACANT ACCORDING TO (A) THE MOST RECENT PREVIOUS UNITED STATES CENSUS; OR (B) A SURVEY MEETING ACCEPTED PROFESSIONAL STANDARDS AND PERFORMED BY A PUBLIC AGENCY NOT LONGER THAN FIVE YEARS BEFORE, NOR LATER THAN THE DATE OF FILING OF THE AFFORDABLE RENTAL HOUSING DEVELOPMENT APPLICATION.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall expire and be deemed repealed January 1, 2023; provided however that this act shall remain operative and continue in full force and effect with regard to any applications made to a municipality pursuant to this act prior to the repeal of such act.