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

4946

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to creating the Westchester county workforce housing incentive program

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

Section 1. Legislative findings. The legislature hereby finds that it is the public policy of the state of New York to foster the goal of home ownership and the provision of affordable workforce housing in areas of the state, such as the county of Westchester, where there is a shortage of such housing. It is further found by this legislature that local governments have a responsibility to assist in the providing of a fair share of the regional need for affordable housing. Further, each local government has the responsibility to establish a land use plan for its community that provides balanced and diverse housing options for all segments of the community.

This act shall provide that when five or more residential units or mixed-use development with five or more residential units are seeking approval to be built, Westchester county's local governments in exchange for a density bonus on site shall require that as a condition of approval for such site plans and subdivisions the provision of affordable workforce housing in an amount equal to at least ten percent of the housing units be set aside. In the alternative, where a local government determines that the provision of suitable affordable workforce housing may not be provided on site, that in lieu of said requirement, in exchange for a density bonus, either a payment may be made of a reasonable sum to be determined by the local government for the purpose of affordable workforce housing, which sum shall constitute a trust fund for that purpose, or other land and affordable workforce housing units constructed thereon may be provided off-site. It is the intent of the legislature that the density bonus offered by local governments pursuant

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

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to this act shall contribute significantly to the economic feasibility of affordable workforce housing in new residential or mixed-use developments.

S 2. The general municipal law is amended by adding a new article 16-B to read as follows:

ARTICLE 16-B

WESTCHESTER COUNTY WORKFORCE HOUSING INCENTIVE PROGRAM

SECTION 699-H. DEFINITIONS.

699-I. WESTCHESTER COUNTY WORKFORCE HOUSING INCENTIVE PROGRAM.

699-J. TECHNICAL ASSISTANCE FOR WESTCHESTER COUNTY WORKFORCE HOUSING INCENTIVE PROGRAM.

S 699-H. DEFINITIONS. AS USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL MEAN:

1. "AFFORDABLE WORKFORCE HOUSING" MEANS HOUSING FOR INDIVIDUALS OR FAMILIES AT OR BELOW EIGHTY PERCENT OF THE MEDIAN INCOME FOR THE WESTCHESTER COUNTY PRIMARY METROPOLITAN STATISTICAL AREA AS DEFINED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. FOR THE PURPOSES OF THIS SECTION, THE AFFORDABLE WORKFORCE HOUSING UNITS SHALL BE OF CONSISTENT DESIGN TO THOSE OF THE REST OF THE DEVELOPMENT.

2. "DENSITY BONUS" MEANS A DENSITY INCREASE OF AT LEAST TEN PERCENT, UNLESS A LESSER PERCENTAGE IS ELECTED BY THE APPLICANT OVER THE OTHERWISE MAXIMUM ALLOWABLE RESIDENTIAL DENSITY OR FLOOR AREA RATIO IF PART OF A MIXED-USE DEVELOPMENT UNDER THE APPLICABLE ZONING ORDINANCE AND COMPREHENSIVE PLAN AS OF THE DATE OF APPLICATION BY THE APPLICANT TO THE LOCAL GOVERNMENT. ALL DENSITY CALCULATIONS RESULTING IN FRACTIONAL UNITS SHALL BE ROUNDED UP TO THE NEXT WHOLE NUMBER. THE GRANTING OF A DENSITY BONUS SHALL NOT REQUIRE, IN AND OF ITSELF, A COMPREHENSIVE PLAN AMENDMENT, ZONING CHANGE OR OTHER DISCRETIONARY APPROVAL. THE DENSITY BONUS SHALL NOT BE INCLUDED WHEN DETERMINING THE NUMBER OF AFFORDABLE WORKFORCE HOUSING UNITS THAT CONSTITUTE TEN PERCENT OF THE TOTAL.

3. "LOCAL GOVERNMENT" MEANS THE COUNTY OF WESTCHESTER, OR ANY VILLAGE, CITY OR TOWN WITHIN SUCH COUNTY.

S 699-I. WESTCHESTER COUNTY WORKFORCE HOUSING INCENTIVE PROGRAM. 1. WHEN A LOCAL GOVERNMENT APPROVES A SUBDIVISION PLAT OR SITE PLAN FOR FIVE OR MORE RESIDENTIAL UNITS OR A MIXED-USE DEVELOPMENT THAT INCORPORATES FIVE OR MORE RESIDENTIAL UNITS, SUCH LOCAL GOVERNMENT SHALL REQUIRE OF THE APPLICANT:

A. IN EXCHANGE FOR A DENSITY BONUS, THE SET ASIDE OF AT LEAST TEN PERCENT OF SUCH UNITS FOR AFFORDABLE WORKFORCE HOUSING ON SITE; OR

B. UPON THE LOCAL GOVERNMENT MAKING A FINDING THAT THE SET ASIDE OF AT LEAST TEN PERCENT OF SUCH UNITS FOR AFFORDABLE WORKFORCE HOUSING WOULD HAVE A SPECIFIC ADVERSE IMPACT UPON HEALTH, SAFETY OR THE ENVIRONMENT FOR WHICH THERE IS NO FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR AVOID THE SPECIFIC ADVERSE IMPACT, THE PAYMENT OF A REASONABLE FEE, BASED UPON THE FAIR MARKET VALUE OF THE ADDITIONAL LOTS OR UNITS RESULTING FROM THE DENSITY BONUS, TO THE LOCAL GOVERNMENT THAT SHALL CONSTITUTE A TRUST FUND TO BE USED EXCLUSIVELY BY THE LOCAL GOVERNMENT FOR THE PURPOSE OF PROVIDING AFFORDABLE WORKFORCE HOUSING BY ACQUIRING LAND FOR THE SPECIFIC PURPOSE OF PROVIDING AFFORDABLE WORKFORCE HOUSING OR CONSTRUCTING AFFORDABLE WORKFORCE HOUSING; OR REHABILITATING STRUCTURES FOR THE SPECIFIC PURPOSE OF AFFORDABLE WORKFORCE HOUSING. ALL FEES COLLECTED BY THE LOCAL GOVERNMENT AS PROVIDED IN THIS SECTION SHALL BE IN EXCHANGE FOR A DENSITY BONUS AND SHALL BE DEPOSITED IN A SINGLE TRUST FUND FOR THE LOCAL GOVERNMENT AND SHALL BE KEPT IN TRUST AND SEPARATE AND APART FROM ALL OTHER MONIES. MONEYS IN SUCH TRUST FUND SHALL BE DEPOSITED AND SECURED IN THE MANNER PROVIDED BY SECTION TEN OF THIS

CHAPTER. PENDING EXPENDITURES FROM SUCH TRUST FUND, MONEYS THEREIN MAY BE INVESTED IN THE MANNER PROVIDED IN SECTION ELEVEN OF THIS CHAPTER. ANY INTEREST EARNED OR CAPITAL GAIN REALIZED ON THE MONEYS SO DEPOSITED OR INVESTED SHALL ACCRUE TO AND BECOME PART OF SUCH TRUST FUND; OR

C. IN EXCHANGE FOR A DENSITY BONUS, THE PROVISION OF OTHER LANDS AND CONSTRUCTION OF THE AFFORDABLE WORKFORCE HOUSING UNITS THAT ARE NOT PART OF THE SITE PLAN OR SUBDIVISION PLAT WHERE IT IS DETERMINED BY THE LOCAL GOVERNMENT THAT SUITABLE AFFORDABLE WORKFORCE HOUSING CANNOT BE PROVIDED ON SITE.

2. THE LOCAL GOVERNMENT SHALL PROVIDE AN APPLICANT, SUBJECT TO THE PROVISIONS OF THIS ARTICLE, A DENSITY BONUS FOR PROVIDING THE REQUIRED AFFORDABLE WORKFORCE HOUSING UNITS. THE LOCAL GOVERNMENT SHALL GRANT THE ADDITIONAL DENSITY BONUS UNLESS SUCH LOCAL GOVERNMENT MAKES A WRITTEN FINDING, BASED UPON SUBSTANTIAL EVIDENCE, THAT THE DENSITY BONUS IS NOT REQUIRED IN ORDER TO PROVIDE AFFORDABLE WORKFORCE HOUSING OR THAT THE DENSITY BONUS WOULD HAVE A SPECIFIC ADVERSE IMPACT UPON HEALTH, SAFETY OR THE ENVIRONMENT FOR WHICH THERE IS NO FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR AVOID THE SPECIFIC ADVERSE IMPACT.

3. WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, THE LOCAL GOVERNMENT SHALL ADOPT AN ORDINANCE OR LOCAL LAW THAT SPECIFIES HOW THE LOCAL GOVERNMENT SHALL IMPLEMENT THIS ARTICLE, INCLUDING PROVISIONS SPECIFYING HOW DENSITY BONUSES WILL BE PROVIDED. THE LOCAL GOVERNMENT SHALL ALSO ESTABLISH PROCEDURES FOR WAIVING OR MODIFYING DEVELOPMENT AND ZONING STANDARDS THAT WOULD OTHERWISE INHIBIT THE UTILIZATION OF DENSITY BONUSES ON SPECIFIC SITES. THE LOCAL GOVERNMENT'S ORDINANCE OR LOCAL LAW SHALL ENSURE THE CONTINUED AFFORDABILITY OF ALL AFFORDABLE WORKFORCE HOUSING UNITS FOR A PERIOD OF THIRTY YEARS, OR A LONGER PERIOD OF TIME IF REQUIRED BY A MORTGAGE FINANCING ASSISTANCE PROGRAM, A MORTGAGE INSURANCE PROGRAM OR A RENTAL SUBSIDY PROGRAM.

4. WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, THE LOCAL GOVERNMENT WILL DEVELOP A STRATEGY FOR UTILIZING THE MONIES IN THE TRUST FUND WITHIN THREE YEARS OF SUCH MONEYS BEING COLLECTED.

5. A LOCAL GOVERNMENT MAY ENTER INTO INTERMUNICIPAL AGREEMENTS WITH CONTIGUOUS LOCAL GOVERNMENTS TO MEET THE PURPOSES OF THIS ARTICLE.

S 699-J. TECHNICAL ASSISTANCE FOR WESTCHESTER COUNTY WORKFORCE HOUSING INCENTIVE PROGRAM. THE DEPARTMENT OF STATE SHALL PROVIDE, THROUGH ITS OFFICE OF LOCAL GOVERNMENTS SERVICES, TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS THAT ARE DRAFTING ORDINANCES AND LOCAL LAWS TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.