

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sens. C. JOHNSON, DIAZ, KRUEGER, ONORATO, PARKER -- 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 Long Island workforce housing incentive program

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

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

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

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

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1 density bonus offered by local governments pursuant to this act shall
2 contribute significantly to the economic feasibility of affordable work-
3 force housing in new residential or mixed-use developments.

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

6 ARTICLE 16-B

7 LONG ISLAND WORKFORCE HOUSING INCENTIVE PROGRAM

8 SECTION 699-D. DEFINITIONS.

9 699-E. LONG ISLAND WORKFORCE HOUSING INCENTIVE PROGRAM.

10 699-F. TECHNICAL ASSISTANCE FOR LONG ISLAND WORKFORCE HOUSING
11 INCENTIVE PROGRAM.

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

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

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

31 3. "LOCAL GOVERNMENT" MEANS THE COUNTY OF NASSAU OR SUFFOLK, OR ANY
32 VILLAGE, CITY OR TOWN WITHIN THE COUNTY OF NASSAU OR SUFFOLK.

33 S 699-E. LONG ISLAND WORKFORCE HOUSING INCENTIVE PROGRAM. 1. WHEN A
34 LOCAL GOVERNMENT APPROVES A SUBDIVISION PLAT OR SITE PLAN FOR FIVE OR
35 MORE RESIDENTIAL UNITS OR A MIXED-USE DEVELOPMENT THAT INCORPORATES FIVE
36 OR MORE RESIDENTIAL UNITS, SUCH LOCAL GOVERNMENT SHALL REQUIRE OF THE
37 APPLICANT:

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

40 B. UPON THE LOCAL GOVERNMENT MAKING A FINDING THAT THE SET ASIDE OF AT
41 LEAST TEN PERCENT OF SUCH UNITS FOR AFFORDABLE WORKFORCE HOUSING WOULD
42 HAVE A SPECIFIC ADVERSE IMPACT UPON HEALTH, SAFETY OR THE ENVIRONMENT
43 FOR WHICH THERE IS NO FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR
44 AVOID THE SPECIFIC ADVERSE IMPACT, THE PAYMENT OF A REASONABLE FEE,
45 BASED UPON THE FAIR MARKET VALUE OF THE ADDITIONAL LOTS OR UNITS RESULT-
46 ING FROM THE DENSITY BONUS, TO THE LOCAL GOVERNMENT THAT SHALL CONSTI-
47 TUTE A TRUST FUND TO BE USED EXCLUSIVELY BY THE LOCAL GOVERNMENT FOR THE
48 PURPOSE OF PROVIDING AFFORDABLE WORKFORCE HOUSING BY ACQUIRING LAND FOR
49 THE SPECIFIC PURPOSE OF PROVIDING AFFORDABLE WORKFORCE HOUSING OR
50 CONSTRUCTING AFFORDABLE WORKFORCE HOUSING; OR REHABILITATING STRUCTURES
51 FOR THE SPECIFIC PURPOSE OF AFFORDABLE WORKFORCE HOUSING. ALL FEES
52 COLLECTED BY THE LOCAL GOVERNMENT AS PROVIDED IN THIS SECTION SHALL BE
53 IN EXCHANGE FOR A DENSITY BONUS AND SHALL BE DEPOSITED IN A SINGLE TRUST
54 FUND FOR THE LOCAL GOVERNMENT AND SHALL BE KEPT IN TRUST AND SEPARATE
55 AND APART FROM ALL OTHER MONIES. MONEYS IN SUCH TRUST FUND SHALL BE
56 DEPOSITED AND SECURED IN THE MANNER PROVIDED BY SECTION TEN OF THIS

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

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

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

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

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

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

35 S 699-F. TECHNICAL ASSISTANCE FOR LONG ISLAND WORKFORCE HOUSING INCEN-
36 TIVE PROGRAM. THE DEPARTMENT OF STATE SHALL PROVIDE, THROUGH ITS OFFICE
37 OF LOCAL GOVERNMENTS SERVICES, TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS
38 THAT ARE DRAFTING ORDINANCES AND LOCAL LAWS TO COMPLY WITH THE
39 PROVISIONS OF THIS ARTICLE.

40 S 3. This act shall take effect on the first of November next succeed-
41 ing the date on which it shall have become a law.