

2516

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 19, 2011

---

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.

LBD03029-01-1

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, 2, 5, 6, 7, 8,  
27 10 and 11 as added by chapter 639 of the laws of 1989, subdivision 4 as  
28 amended and subdivision 13 as added by chapter 241 of the laws of 1998,  
29 subdivision 12 as added by chapter 400 of the laws of 1994, and para-  
30 graph e of subdivision 12 as amended by chapter 118 of the laws of 2003,  
31 are amended to read as follows:

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

43 2. The portion of such loan funded by the SUPERVISING agency shall not  
44 exceed an amount equal to sixty percent of the actual total development  
45 cost of an eligible project. The SUPERVISING agency may enter into an  
46 agreement with a private lender to deposit its share of a loan with the  
47 private lender to be advanced by the private lender. The portion of the  
48 loan funded by the SUPERVISING agency may be equal to or subordinate in  
49 lien to the portion of the loan funded by the private lender and may  
50 contain such terms with respect to interest rate, if any, rate of amor-  
51 tization of principal, if any, and time of payment of interest and prin-  
52 cipal as determined by the SUPERVISING agency. The SUPERVISING agency  
53 may make provision either in the mortgage or mortgages or by separate  
54 agreement for the performance by the private lender of such services as  
55 are generally performed by a banking institution which itself holds a  
56 mortgage, including, without limitation, construction loan advances,

1 construction supervision, initiation of foreclosure proceedings,  
2 procurement of insurance, and all other matters in connection with the  
3 financing, supervision, regulation and audit of any such loan to any  
4 such eligible project.

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

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

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

48 7. [If] IN THE CITY OF NEW YORK, IF the eligible project is a rental  
49 project annual profits shall be limited to an amount set by the SUPER-  
50 VISING agency for as long as the loan is outstanding. Excess profits  
51 shall be used to establish project reserves, provide capital improve-  
52 ments or reduce the principal amount of the SUPERVISING agency's loan,  
53 as determined by the SUPERVISING agency.

54 8. If the eligible project is a rental project, no conversion to a  
55 cooperative or condominium shall be permitted for a period of twenty  
56 years after initial occupancy, and unless (i) the SUPERVISING agency's

1 share of the loan is prepaid upon such conversion, (ii) the conversion  
2 shall be done pursuant to section three hundred fifty-two-eeee of the  
3 general business law as a non-eviction plan, and (iii) apartments occu-  
4 pied by non-purchasing tenants continue to be subject to the rent  
5 stabilization law of nineteen hundred sixty-nine as amended, until the  
6 occurrence of a vacancy.

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

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

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

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

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

51 d. An advance granted pursuant to this section shall be used only to  
52 defray the pre-development costs of eligible projects. For purposes of  
53 this subdivision, the term pre-development costs shall include, but  
54 shall not be limited to: the reasonable and necessary costs for plan-  
55 ning, site preparation, developing architectural drawings and conducting  
56 engineering and environmental studies, but shall not include acquisition

1 of land or buildings, drainage and landscaping of vacant land,  
2 construction of new buildings or the reconstruction or rehabilitation of  
3 existing buildings.

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

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

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

41 S 4. Section 1153 of the private housing finance law, as added by  
42 chapter 639 of the laws of 1989, is amended to read as follows:

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

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

51 S 5. This act shall take effect on the ninetieth day after it shall  
52 have become a law.