

# STATE OF NEW YORK

7635--A

## IN SENATE

January 5, 2022

Introduced by Sens. MAY, HOYLMAN -- 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 public housing law, in relation to low or moderate income housing developments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public housing law is amended by adding a new section  
2 14-a to read as follows:

3 § 14-a. Low or moderate income housing developments. 1. Definitions.  
4 For the purposes of this section, the following terms shall have the  
5 following meanings:

6 (a) "Low or moderate income housing development" means any housing,  
7 including both housing intended for homeownership and rental, that is  
8 subsidized by county, federal or state government under any program to  
9 assist the construction of a low or moderate income housing development  
10 as defined in the applicable federal or state statute, whether built or  
11 operated by any public agency, limited-dividend organization, or other  
12 private organization. For a housing development to qualify as a "low or  
13 moderate income housing development", such housing development shall:  
14 (i) have at least twenty-five percent of such housing development's  
15 housing units be affordable, as determined by the division, to house-  
16 holds who earn no more than eighty percent of the area median income;  
17 (ii) for rental housing developments, have at least twenty percent of  
18 such housing development's housing units be affordable, as determined by  
19 the division, to households earning below sixty percent of the area  
20 median income; or (iii) in the city of New York, be subject to an antic-  
21 ipated regulatory agreement with a city, state, or federal government  
22 entity.

23 (b) "Uneconomic" means any condition brought about by any single  
24 factor or combination of factors to the extent that it makes it substan-  
25 tially unlikely for a public agency or nonprofit organization to proceed  
26 in building or operating a low or moderate income housing development

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

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1 without financial loss, or for a limited-dividend organization or other  
2 private organization to proceed and still realize a reasonable return in  
3 building or operating such housing within the limitations set by the  
4 subsidizing agency of government on the size or character of the devel-  
5 opment or on the amount or nature of the subsidy or on the tenants,  
6 rentals and income permissible, and without substantially changing the  
7 rent levels and units sizes proposed by the public agency, limited-divi-  
8 dend organization, or other private organization.

9 (c) "Consistent with regional needs" means reasonable in view of the  
10 regional need for low and moderate income housing developments and  
11 necessary to protect the health and safety of the occupants of such  
12 housing, or of the residents of a city, town, or village. Impacts  
13 related to aesthetics or community character, impacts related to school  
14 enrollment or the fiscal cost of providing public services, and ordinary  
15 impacts on traffic and parking shall not be considered to affect health  
16 or safety in assessing consistency with regional needs, except that  
17 impacts related to school enrollment may be considered for school  
18 districts designated by the comptroller as being under significant or  
19 moderate fiscal stress.

20 (d) "Local board" means any city, town, or village board, commission,  
21 officer or other agency or office having supervision of the construction  
22 of buildings or the power of enforcing municipal building laws.

23 (e) "Local zoning board of appeals" means a zoning board of appeals  
24 for a city, town, or village operating pursuant to article five-A of the  
25 general city law, section two hundred sixty-seven of the town law, or  
26 section 7-712 of the village law, or the New York city board of stand-  
27 ards and appeals.

28 (f) "State zoning board of appeals" or "state board" means the state  
29 zoning board of appeals established pursuant to subdivision five of this  
30 section.

31 (g) "Limited-dividend organization" means a limited-dividend housing  
32 company established under article four of the private housing finance  
33 law.

34 (h) "Public agency" shall mean any county, city, town, village or  
35 state government body or subdivision thereof.

36 (i) "Nonprofit organization" shall mean a corporation having tax  
37 exempt status under section 501 (c) (3) of the United States Internal  
38 Revenue Code.

39 (j) "Division" shall mean the division of housing and community  
40 renewal.

41 (k) "Specific, adverse impact" shall mean a significant, quantifiable,  
42 direct, and unavoidable impact, based on objective, identified written  
43 public health or safety standards, policies, or conditions, which shall  
44 be further specified by the division of housing and community renewal  
45 via rule and/or regulation, as such standards, policies, or conditions  
46 existed on the date the application for a low or moderate income housing  
47 development was deemed complete.

48 (l) "Housing unit" shall mean a dwelling, as such term is defined by  
49 section four of the multiple dwelling law, or an individual unit in a  
50 multiple dwelling, as such term is defined by section four of the multi-  
51 ple dwelling law, that is maintained as a separate living quarters from  
52 any other such units in such multiple dwelling.

53 2. Applying to local zoning boards of appeals. (a) Subject to the  
54 provisions of this section, a public agency, limited-dividend organiza-  
55 tion, or other private organization proposing to build a low or moderate  
56 income housing development may submit to the applicable local zoning

1 board of appeals, a single application to build such housing development  
2 in lieu of separate applications to the applicable local boards. The  
3 local zoning board of appeals shall without delay notify each such local  
4 board, as applicable, of the filing of such application by sending a  
5 copy of such application to such local boards for their recommendations  
6 and shall, within thirty days of the receipt of such application, hold a  
7 public hearing on the same. The local zoning board of appeals shall  
8 request the appearance at such hearing of such representatives of such  
9 local boards as it shall deem necessary or helpful in making its deci-  
10 sion upon such application and shall have the same power to issue  
11 permits or approvals as any local board or official who would otherwise  
12 act with respect to such application, including but not limited to the  
13 power to attach to such permit or approval conditions and requirements  
14 with respect to height, site plan, size or shape, or building materials  
15 as are consistent with the terms of this section. The local zoning board  
16 of appeals, in making its decision on such application, shall take into  
17 consideration the recommendations of the local boards and shall have the  
18 authority to use the testimony of consultants. The local zoning board of  
19 appeals shall approve such application unless:

20 (i) written findings supported by a preponderance of the evidence on  
21 the record demonstrate that both of the following conditions exist:

22 (A) the proposed low or moderate income housing development would have  
23 a specific, adverse impact upon public health and/or safety; and

24 (B) there is no feasible method to satisfactorily mitigate or avoid  
25 the adverse impact identified pursuant to clause (A) of this subpara-  
26 graph, other than denial of the application for such proposed low or  
27 moderate income housing development or the imposition of the conditions  
28 imposed by the local zoning board of appeals; or

29 (ii) an application is not permitted under paragraph (b) of this  
30 subdivision.

31 (b) An application shall not be eligible for submission to a local  
32 zoning board of appeals under paragraph (a) of this subdivision where  
33 such application is for a low or moderate income housing development to  
34 be built:

35 (i) in a city, town, or village having a total number of housing units  
36 that are determined by the division to be income-restricted at eighty  
37 percent of the area median income, or lower, regardless of the type of  
38 housing program or subsidy involved, not including market rate housing  
39 units existing in the same building as any such income-restricted hous-  
40 ing units:

41 (A) exceeding fifteen percent of the housing units reported in the  
42 latest federal decennial census of such city, town, or village; or

43 (B) in the case of the city of New York, exceeding fifteen percent of  
44 the housing units in the area covered by the applicable community board;  
45 or

46 (ii) in the city of New York, where the area covered by the applicable  
47 community board has a median income that is equal to or below one  
48 hundred percent the area median income, as determined by the division.

49 (c) The local zoning board of appeals shall render a decision, based  
50 upon a majority vote of such board, within forty days after the termi-  
51 nation of the public hearing held pursuant to this subdivision and, if  
52 favorable to the applicant, shall without delay issue a comprehensive  
53 permit or approval. If such decision results in a denial of the appli-  
54 cation for a low or moderate income housing development, or results in  
55 the attachment of conditions and/or requirements to a permit or  
56 approval, a written decision including specific findings based in

1 evidence shall be delivered to the applicant. If a public hearing is not  
2 convened or a decision is not rendered within the time allowed, unless  
3 the time has been extended by mutual agreement between the local zoning  
4 board of appeals and the applicant, the application shall be deemed to  
5 have been allowed and the comprehensive permit or approval shall be  
6 issued. Any person aggrieved by the issuance of a comprehensive permit  
7 or approval may appeal to the court as provided in article seventy-eight  
8 of the civil practice law and rules.

9 (d) A local zoning board of appeals shall not require any traffic  
10 studies to be conducted in its consideration of an applicant's applica-  
11 tion under this section, and shall not delay its consideration of such  
12 application due to any traffic study conducted by any other state or  
13 local entity.

14 (e) The local zoning board of appeals shall adopt rules, not  
15 inconsistent with the purposes of this section, for the conduct of its  
16 business pursuant to this section and shall file a copy of such  
17 rules with the city, town, or village clerk.

18 3. Right to appeal to the state board. Whenever an application filed  
19 under subdivision two of this section is denied, or is granted with such  
20 conditions and requirements as to make the building or operation of such  
21 housing uneconomic, the applicant shall have the right to appeal to the  
22 state board for a review of the same. Such appeal shall be taken within  
23 twenty days after the date of the notice of the decision by the local  
24 zoning board of appeals by filing with the state board a statement of  
25 the prior proceedings and the reasons upon which such appeal is based.  
26 The state board shall notify the appropriate local zoning board of  
27 appeals of the filing of such petition for review and such local zoning  
28 board of appeals shall, within ten days of the receipt of such notice,  
29 transmit a copy of its decision and the reasons therefor to the state  
30 board. Such appeal shall be heard by the state board within twenty days  
31 after receipt of the applicant's statement. A stenographic record of the  
32 proceedings shall be kept and the state board shall render a written  
33 decision, based upon a majority vote, stating its findings of fact, its  
34 conclusions and the reasons therefor within thirty days after the termi-  
35 nation of the hearing, unless such time shall have been extended by  
36 mutual agreement between the state board and the applicant. Such deci-  
37 sion may be reviewed by the supreme court in accordance with the  
38 provisions of the state administrative procedure act. The state board  
39 shall deny an appeal of an application to build a low or moderate income  
40 housing development under this subdivision if the city, town, or village  
41 where such low or moderate income housing development would be built has  
42 otherwise increased its proportion of overall housing that is affordable  
43 to households earning below fifty percent of the area's median income by  
44 two percent or more in the previous year.

45 4. State board hearings. (a) A hearing by the state board under  
46 subdivision three of this section shall be limited to the issue of  
47 whether, in the case of the denial of an application, the decision of  
48 the local zoning board of appeals was consistent with regional needs, or  
49 whether such application was improperly denied by such local zoning  
50 board of appeals pursuant to paragraph (b) of subdivision two of this  
51 section; and, in the case of an approval of an application with condi-  
52 tions and requirements imposed, whether such conditions and requirements  
53 make the construction or operation of such housing uneconomic and wheth-  
54 er they are consistent with regional needs. The burden of proof in such  
55 state board hearings shall be upon the respondent to demonstrate that  
56 the decision of the local zoning board of appeals was permissible pursu-

1 ant to this section. If the state board finds, in the case of a denial,  
2 that the decision of the local zoning board of appeals was not consist-  
3 ent with regional needs, it shall vacate such decision and shall direct  
4 such local zoning board of appeals to issue a comprehensive permit or  
5 approval to the applicant. If the state board finds, in the case of an  
6 approval with conditions and requirements imposed, that the decision of  
7 the local zoning board of appeals makes the building or operation of  
8 such housing uneconomic and is not consistent with regional needs, it  
9 shall order such local zoning board of appeals to modify or remove any  
10 such condition or requirement so as to make the proposal no longer  
11 uneconomic and to issue any necessary permit or approval; provided,  
12 however, that the state board shall not issue any order that would  
13 permit the building or operation of such housing in accordance with  
14 standards less safe than the applicable building and site plan require-  
15 ments of the federal housing administration or any applicable state  
16 requirements, whichever agency is financially assisting such housing.  
17 Decisions or conditions and requirements imposed by a local zoning board  
18 of appeals that are consistent with regional needs shall not be vacated,  
19 modified or removed by the state board notwithstanding that such deci-  
20 sions or conditions and requirements have the effect of making the  
21 applicant's proposal uneconomic.

22 (b) The state board or the petitioner shall have the power to enforce  
23 the orders of the state board at law or in equity in court. The local  
24 zoning board of appeals shall carry out the order of the state board  
25 within thirty days of its entry and, upon failure to do so, the order of  
26 the state board shall, for all purposes, be deemed to be the action of  
27 such local zoning board of appeals, unless the petitioner consents to a  
28 different decision or order by such local zoning board of appeals.

29 (c) If a municipality appeals a decision of the state board to the  
30 court under article seventy-eight of the civil practice law and rules,  
31 and the court rules in favor of the applicant for a low or moderate  
32 income housing development in such proceeding, such municipality shall  
33 be required to pay for any legal costs incurred by such applicant as a  
34 result of such appeal.

35 5. State zoning board of appeals established. (a) There is hereby  
36 established, within the division, a state zoning board of appeals, to  
37 effectuate the provisions of this section.

38 (b) The state board shall consist of three members, one of whom shall  
39 be the commissioner of the division or such commissioner's designee, one  
40 of whom shall be appointed by the governor and who shall have expertise  
41 in fair housing, and one of whom shall be appointed by the governor and  
42 who shall have experience in local government with demonstrated success  
43 in developing affordable housing.

44 (c) The state board shall have the power and duties to conduct hear-  
45 ings, issue orders, and otherwise perform any function necessary to  
46 operate in conformity with the provisions of this section. In addition  
47 to the functions or duties specifically directed or authorized pursuant  
48 to this section, the state board shall have any powers or duties  
49 directed or authorized by the division.

50 6. Rules, regulations, and administration. (a) The division shall be  
51 authorized to promulgate any rules and/or regulations necessary for the  
52 implementation of the provisions of this section.

53 (b) Notwithstanding any other provision of law, the department of  
54 environmental conservation shall promulgate regulations deeming develop-  
55 ment pursuant to this section to be an action under article eight of the  
56 environmental conservation law.

1 (c) The division shall provide any administrative support to the state  
2 board necessary for the effective implementation of the provisions of  
3 this section.

4 § 2. The division shall conduct a study regarding the qualified allo-  
5 cation plan for low income housing tax credits developed pursuant to  
6 section 42 of the Internal Revenue Code. Such study shall consider  
7 whether and how to revise the qualified allocation plan in light of the  
8 processes for building low or moderate income housing under section 14-a  
9 of the public housing law, such that the state's policies for funding  
10 and permitting low and moderate income housing can best be aligned to  
11 most effectively produce affordable housing. Such study shall also  
12 consider whether such an alignment can support the state's fair housing  
13 goals. The commissioner shall submit a report of the division's find-  
14 ings of such study and any recommendations to the governor, the speaker  
15 of the assembly and the temporary president of the senate on or before  
16 one year after the effective date of this act.

17 § 3. This act shall take effect on the one hundred eightieth day after  
18 it shall have become a law. Effective immediately, the addition, amend-  
19 ment and/or repeal of any rule or regulation necessary for the implemen-  
20 tation of this act on its effective date are authorized to be made and  
21 completed on or before such date.