

# STATE OF NEW YORK

3111

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Housing

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:

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

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

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

(b) "Uneconomic" means any condition brought about by any single factor or combination of factors to the extent that it makes it substantially unlikely for a public agency or nonprofit organization to proceed

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

LBD00515-01-3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (b) Notwithstanding any other provision of law, the department of  
55 environmental conservation shall promulgate regulations deeming develop-

1 ment pursuant to this section to be an action under article eight of the  
2 environmental conservation law.

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

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

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