# STATE OF NEW YORK

2276--A

2023-2024 Regular Sessions

# IN SENATE

January 19, 2023

Introduced by Sens. KAVANAGH, CLEARE, FELDER, GOUNARDES, HOYLMAN-SIGAL, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged and said bill committed to the Committee on Housing, Construction and Community Development -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple dwelling law and the private housing finance law, in relation to establishing a program to address the legalization of specified basements and cellars and the conversion of other specified basements and cellars in a city with a population of one million or more

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

Section 1. The multiple dwelling law is amended by adding a new article 7-D to read as follows:

**ARTICLE 7-D**

**LEGALIZATION AND CONVERSION OF BASEMENTS AND CELLARS**

**Section 288. Definitions.**
**289. Basement and cellar local laws and regulations.**
**290. Tenant protections in inhabited basements and cellars.**

**§ 288. Definitions. As used in this article, unless the context or subject matter requires otherwise, the following terms shall have the following meanings:**

**1. The term "inhabited basement or cellar" means a basement or cellar unlawfully occupied as a residence by one or more tenants on or prior to the effective date of this article;**

**2. The term "rented" means leased, let, or hired out, with or without a written agreement; and**

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

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3. The term "tenant" means an individual to whom an inhabited basement or cellar dwelling unit is rented.

§ 289. Basement and cellar local laws and regulations. 1. Notwithstanding any other provision of state or local law to the contrary, in a city with a population of one million or more, the local legislative body may, by local law, establish a program to address, provided that health and safety are protected, (a) the legalization of specified inhabited basements and cellars in existence prior to the effective date of this article through conversion to legal dwelling units, and (b) the conversion of other specified basements and cellars in existence prior to the effective date of this article to legal dwelling units. The local law authorized by this section, and any rules or regulations promulgated thereunder, shall not be subject to environmental review, including, but not limited to, environmental review conducted pursuant to article eight of the environmental conservation law and any state and local regulations promulgated thereunder.

2. The program established by such local law may provide to an owner who converts a basement or cellar in accordance with a local law authorized by this article or who otherwise abates the illegal occupancy of a basement or cellar: (a) amnesty from any civil or administrative liability, citations, fines, penalties or any other enforcement of or prosecution for civil violations of this chapter, other state law or local law or rules, and the zoning resolution of such city, and (b) relief from any outstanding civil judgments issued in connection with any such violation of such laws, rules or zoning resolution issued before the effective date of this article; provided, however, that such local law shall require that such amnesty or relief shall be available only to an owner that has submitted an application for a conversion by a date certain subsequent to the effective date of such local law and that such date shall not be later than ten years after the effective date of such local law.

3. (a) Such local law may supercede any provision of local law or rule to facilitate the conversion of a specified inhabited basement or cellar or other specified basement or cellar in existence prior to the effective date of this article into a lawful dwelling unit. For the purposes of this program, the local law adopted by the legislative body of such municipality shall be no less stringent than the relevant standards or specifications of the uniform fire prevention and building code and state energy conservation construction code applicable to the conversion of basements and cellars to habitable dwelling units in municipalities other than a city with a population of one million or more, unless such legislative body determines that the application of such standards or specifications would present practical difficulties that impede the purposes of this article and includes in such local law an alternative standard or specification that such legislative body determines to be sufficient to protect public safety.

(b) Such local law may supersede the following provisions of this chapter: sections twenty-six, twenty-eight, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, fifty, fifty-a, fifty-one, fifty-two, fifty-four, fifty-six, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-eight, and seventy-six, and articles four, five and six.

(c) Any amendment of the zoning resolution necessary to enact such program shall be subject to a public hearing at the planning commission of such locality, and approval by such commission and the legislative body of such local government, provided, however, that it shall not

require environmental review, including, not limited to, environmental review conducted pursuant to article eight of the environmental conservation law and any state and local regulations promulgated thereunder, or any additional land use review.

§ 290. Tenant protections in inhabited basements and cellars. 1. The program authorized by this article shall require an application to make alterations to legalize an inhabited basement or cellar be accompanied by a certification indicating whether such unit was rented to a tenant on the effective date of this article, notwithstanding whether the occupancy of such unit was authorized by law. An agency or office of a city where the program has been established may not use such certification as the basis for an enforcement action for illegal occupancy of such unit, provided that nothing contained in this article shall be construed to limit any agency or office from issuing a vacate order for hazardous conditions.

2. The local law authorized by this article shall provide that a tenant in occupancy at the time of the effective date of this article who is evicted or otherwise removed from such unit as a result of an alteration necessary to bring an inhabited basement or cellar into compliance with the standards established by the local law authorized by this article, shall have a right of first refusal to return to such unit as a tenant upon its first lawful occupancy as a legal dwelling unit, notwithstanding whether the occupancy at the time of the effective date of this article was authorized by law. Such local law shall specify how to determine priority when multiple tenants may claim such right.

3. A tenant unlawfully denied a right of first refusal to return to a legal dwelling unit, as provided pursuant to the local law authorized by this article, shall have a cause of action against the owner of such dwelling unit in any court of competent jurisdiction for compensatory damages or declaratory and injunctive relief as the court deems necessary in the interests of justice, provided that such compensatory relief shall not exceed the annual rental charges for such legal dwelling unit.

4. Notwithstanding the local emergency housing rent control act of 1962 as amended, the local law authorized by this article shall include protections against eviction and limitations on rent increases for basement or cellar dwelling units that undergo legalization, including limitations on rent increases for tenants returning to such units pursuant to the provisions of subdivision two of this section.

§ 2. The private housing finance law is amended by adding a new article 8-C to read as follows:

## ARTICLE VIII-C
## LOANS TO OWNERS OF ONE TO FOUR UNIT PRIVATE AND MULTIPLE DWELLINGS

Section 480. Policy and purposes of article.
481. Definitions.
482. Loans to owners.
483. Conditions precedent to making loans to owners.
484. Servicing of loans by banking institutions and loan servicing companies.
485. Interest reduction subsidies.
486. Mortgage recording tax exemption.
487. Rules and regulations.
488. Source of funds.

§ 480. Policy and purposes of article. It is hereby declared and found that there exists in cities with a population of one million or more a seriously inadequate supply of safe and sanitary dwelling units, particularly for persons of low and moderate income. It further is found that

there exists in such cities many basements and cellars in one to four unit dwellings, some of which are inhabited unlawfully, that could be converted into safe and sanitary lawful dwelling units. It further is found that such conversion and any associated rehabilitation or improvement of such dwellings cannot be readily accomplished without public aid in the form of low interest loans or grants to owners of such dwellings. The creation of lawful and habitable dwelling units in basements and cellars of one to four unit dwellings is hereby declared a public purpose and a municipal purpose for which public monies may be loaned or granted. In order to further such purpose, it is hereby declared that additional provisions should be made to provide public monies for interest reduction subsidies for private loans made by private investors for such rehabilitation. The necessity in the public interest for the provisions of this article is hereby declared as a matter of legislative determination.

§ 481. Definitions. 1. "Agency" shall mean the department of housing preservation and development of the city of New York or any successor thereto.

2. "Banking organization" shall mean any corporation, association or organization organized under the banking laws of New York state or the United States which is authorized to transact business in this state.

3. "Basement" shall have the same meaning as provided in subdivision thirty-eight of section four of the multiple dwelling law.

4. "Cellar" shall have the same meaning as provided in subdivision thirty-seven of section four of the multiple dwelling law.

5. "City" shall mean a city with a population of one million or more.

6. "Climate resiliency improvements" shall mean improvements for the purpose of protecting land or any structures thereon from damage resulting from or which may result from changes in climate, including, but not limited to, extreme weather events, abnormal temperatures, and sea level rise, or of reducing the impact of the operation of such structures on climate change, including, but not limited to, improvements that reduce energy consumption or promote the efficient use of natural resources.

7. "Existing multiple dwelling" shall mean a multiple dwelling as defined in section four of the multiple dwelling law that is in existence on the date upon which an application for a loan pursuant to this article is received by the agency.

8. "Existing private dwelling" shall mean a private dwelling as defined in section four of the multiple dwelling law that is in existence on the date upon which an application for a loan pursuant to this article is received by the agency.

9. "Federal grant funds" shall mean any grants received from the federal government for community development activities or for the rehabilitation or conservation of private or multiple dwellings.

10. "Loan" shall mean a loan or a grant made by the city pursuant to section four hundred eighty-two of this article, provided, however, that provisions of this article concerning the repayment or forgiveness of, or security for, a loan shall not apply to any grant made pursuant to this article.

11. "Owner" shall mean an individual, a partnership, a corporation or other entity, including, but not limited to, a trust, or a joint tenancy, tenancy in common or tenancy by the entirety holding record or beneficial title in fee simple to an existing private or multiple dwelling and the real property upon which it is situated, or the lessee thereof under a lease having an unexpired term of at least thirty years. "Owner"

shall be deemed to also include a cooperative corporation or a condominium association.

12. "Private investor" shall mean a banking organization, foundation, public benefit corporation, labor union, credit union, employers' association, veterans' organization, college, university, educational institution, child care institution, hospital, medical research institute, insurance company, trustee or fiduciary, trustees of a pension and retirement fund or system, corporation, partnership, individual or other entity or any combination of the foregoing, and shall include the United States of America and any of its agencies and departments.

13. "Rehabilitation" shall mean the installation, replacement, or repair of heating, plumbing, electrical and related systems or the elimination of conditions dangerous to human life or detrimental to health, including nuisances as defined in local housing or health codes or as defined in section three hundred nine of the multiple dwelling law, or other rehabilitation or general property and energy conservation improvements.

14. "State grant funds" shall mean any grant received from the state or any public benefit corporation for community development activities or for the rehabilitation or conservation of private or multiple dwellings.

§ 482. Loans to owners. 1. Notwithstanding the provisions of any general, special or local law, the city, acting through the agency, is authorized:

(a) to make, or contract to make, loans to owners of one to four unit existing private or multiple dwellings, subject to the limitation of subdivisions two through seven of this section, in such amounts as shall be required for the conversion of a basement or cellar in a one to four unit private or multiple dwelling to a safe and sanitary lawful dwelling unit and other rehabilitation of or improvements to such private or multiple dwelling, including, but not limited to, climate resiliency improvements, that the agency may determine are needed in such dwelling;

(b) to make temporary loans or advances to owners of one to four unit existing private or multiple dwellings in anticipation of permanent loans to such owners for the purposes described in paragraph (a) of this subdivision; and

(c) to make or contract to make grants to any owner described in paragraph (a) of this subdivision, on the same terms as permitted under such paragraph for a loan.

2. Each loan shall be evidenced by a note executed by the owner of the existing dwelling. Repayment of each such note shall be within a period of forty years, provided that such period may be extended as the agency may determine necessary to ensure the continued affordability or economic viability of the existing dwelling. The repayment shall be made in such manner as may be provided in such note and contract, if any, in connection with such loan, and may authorize such owner, with the consent of the agency, to prepay the principal of the loan subject to such terms and conditions as therein provided. In order to make any such loan affordable to the owner, the agency may provide in such note and contract that all of the outstanding principal of said loan may be self-liquidated over a period of not less than fifteen years of continuous compliance by the owner with a regulatory agreement or restrictive covenant with or approved by the agency and upon the satisfaction of any additional conditions specified therein. Such note and contract may contain such other terms and provisions not inconsistent with the provisions of this article as the agency may deem necessary or desirable

to secure repayment of the loan, the interest thereon, if any, and other charges in connection therewith, and to carry out the purposes and provisions of this article, including, but not limited to, providing that the lien created by the note and mortgage, and, if applicable, any regulatory agreement executed by such owner and agency or restrictive covenant approved by such agency, may be recorded in an equal or subordinate position, or subsequently made equal or subordinate, to a lien recorded by any private investor against such existing dwelling.

3. The agency in its discretion may require that the owner execute, acknowledge and deliver a uniform commercial code financing statement for the real property improvement to be in such form as the agency shall specify and in accordance with the requirements of section 9--502 of the uniform commercial code of the state of New York. Said financing statement shall be filed or recorded without charge in accordance with the provisions of paragraph one of subsection (a) of section 9--501 of the uniform commercial code, and from the date of such filing the city shall have a lien against said real property improvement for the amount advanced or so much thereof as remains unpaid together with the interest thereon. Upon payment of all sums advanced by the city and interest thereon, and upon demand of the then record owner of the real property, the agency shall deliver a copy of the financing statement with an endorsement thereon that the lien is satisfied. Upon filing of such copy in the office where the financing statement was filed and upon payment of the proper fee therefor, the lien of such financing statement shall be discharged.

4. The agency may require the owner to execute a mortgage as security for a loan in lieu of or in addition to a financing statement as provided in subdivision three of this section. Such mortgage shall contain such terms and provisions not inconsistent with the provisions of this article as the agency shall deem necessary or desirable to secure repayment of the loan.

5. Loans may be made with respect to a one to four unit private or multiple dwelling encumbered by mortgages, provided no mortgage is in default, except if such default shall be remedied by the proposed rehabilitation or improvement.

6. The agency may require the payment of charges by an owner of such existing private or multiple dwelling in consideration for the financing, regulation, supervision and audit of such loan. Such charges shall be paid into the treasury of the city requiring the charges and shall be paid and deposited in the general fund of such city.

7. In making a loan under this article, the agency shall have the power to participate in a loan made by any private investor. The agency may enter into an agreement with a private investor to deposit funds with such private investor to cover the agency's participation in loans to owners of one to four unit existing private and multiple dwellings with such funds advanced by such private investor to owners of such existing dwellings. The portion of the loan funded by the agency may be equal to or subordinate in lien to the portion of the loan funded by the private investor and the note and contract may contain such terms with respect to interest rate, if any, and time of payment of principal and interest as determined by the agency. The agency may make provision, either in the mortgage or mortgages or by separate agreement, for the performance by the private investor of such services as are generally performed by a banking institution which itself holds a mortgage, including, without limitation, construction loan advances, construction supervision, initiation of foreclosure proceedings, procurement of

insurance, and all other matters in connection with the financing, supervision, regulation and audit of any such loan. In order to make the loan affordable to the owner, the agency may provide an interest reduction subsidy pursuant to section four hundred eighty-five of this article, or may provide that all or part of the agency's portion of the outstanding principal of any such participation loan may be self-liquidated over a period of not less than fifteen years of continuous compliance by the owner with a regulatory agreement or restrictive covenant with or approved by the agency and upon the satisfaction of any additional conditions specified therein.

§ 483. Conditions precedent to making loans to owners. 1. No such loan shall be made to an owner of an existing private or multiple dwelling unless such owner shall covenant in writing that so long as any part of such loan shall remain unpaid or any requirement imposed as a condition for making such loan that survives the repayment of such loan, including, but not limited to, in a regulatory agreement executed pursuant to subdivision two of this section or a restrictive covenant approved by such agency, remains in effect: (a) the owner or managing agent or operator of such dwelling shall permit the duly authorized officers, employees, agents or inspectors of the agency to enter in or upon and inspect such dwelling at all reasonable hours; (b) the agency by such duly authorized representatives as aforesaid shall have full power to investigate into and order the owner of such dwelling to furnish such reports and information as it may require concerning the conversion of the basement or cellar in such dwelling and all other rehabilitation or improvements funded with such loan and shall have full power to audit the books of said owner with respect to such matters; and (c) if the basement or cellar to be converted is in a multiple dwelling, the owner will submit to the agency annually a statement of income and expenses of such dwelling, in such form as shall be approved by the agency.

2. No such loan shall be made to an owner of an existing private or multiple dwelling unless the agency and such owner shall have executed a regulatory agreement that includes protections against eviction and limitations on rent increases applicable to each basement or cellar dwelling unit for which the loan is to be made.

3. The agency shall have the power to impose additional terms and conditions precedent to make such loans.

§ 484. Servicing of loans by banking institutions and loan servicing companies. 1. The agency may make provision in the note and loan agreement or by separate agreement for the performance by one or more banking institutions of such services as are generally performed by any such bank itself owning and holding such a loan and as may be approved by the superintendent of financial services for which services a bank may make and collect such service charges as the superintendent shall prescribe or approve.

2. The agency may make provision in the note and loan agreement or by separate agreement for the servicing of such loans by a loan servicing company or other qualified entity, as determined by the agency, and such services may include, but not be limited to, the collection of the debt services on such loans and the establishment, administration, and distribution of an escrow account for the payment of the owner's real estate taxes, sewer and water rents and fire insurance.

§ 485. Interest reduction subsidies. Notwithstanding the provisions of any general, special or local law, the city, acting through the agency, is authorized to provide, or contract to provide, interest reduction subsidies for loans made by private investors to owners of one to four

unit existing private or multiple dwellings pursuant to paragraph (a) of subdivision one of section four hundred eighty-two of this article, if such owners would have been eligible under the provisions of this article for a loan made by the city pursuant to this article.

§ 486. Mortgage recording tax exemption. Notwithstanding any inconsistent provision of law, mortgages to secure a loan made pursuant to the provisions of this article shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law.

§ 487. Rules and regulations. The agency may promulgate rules and regulations to carry out the provisions of this article.

§ 488. Source of funds. The city may utilize federal grant funds, state grant funds or any municipal funds to make loans and to provide interest reduction subsidies pursuant to this article.

§ 3. This act shall take effect immediately.