

# STATE OF NEW YORK

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2023-2024 Regular Sessions

## IN SENATE

January 9, 2023

Introduced by Sens. MAY, HARCKHAM, HOYLMAN-SIGAL, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the public housing law, in relation to enacting the "sustainable affordable housing and sprawl prevention act"

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

1 Section 1. This act shall be known and may be cited as the "sustainable affordable housing and sprawl prevention act".

2  
3 § 2. The environmental conservation law is amended by adding a new  
4 section 8-0119 to read as follows:

5 § 8-0119. Certain actions exempt or subject to limited review.

6 1. Exempt actions for construction of residential dwellings. (a)  
7 Notwithstanding any law, rule or regulation to the contrary, qualifying  
8 actions with respect to the construction of a new multiple dwelling or  
9 more than one contiguous multiple dwellings that meet the following  
10 thresholds shall be automatically determined not to have a significant  
11 impact on the environment and shall be exempt from any environmental  
12 review requirements under this article or any rules or regulations  
13 promulgated pursuant hereto:

14 (i) fewer than ten total residential units in municipalities that have  
15 not adopted zoning or subdivision regulations;

16 (ii) fewer than fifty total residential units in a building in which  
17 no more than twenty percent of the floor area consists of commercial or

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

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1 community facility uses not to be connected at the commencement of habi-  
2 tation to existing community or public water and sewerage systems  
3 including sewage treatment works;

4 (iii) in a city, town, or village having a population of ninety thou-  
5 sand persons or less, fewer than two hundred total residential units in  
6 a building in which no more than twenty percent of the floor area  
7 consists of commercial or community facility uses to be connected at the  
8 commencement of habitation to existing community or public water and  
9 sewerage systems including sewage treatment works;

10 (iv) in a city, town, or village having a population of greater than  
11 ninety thousand but less than one million, fewer than five hundred total  
12 residential units in a building in which no more than twenty percent of  
13 the floor area consists of commercial or community facility uses to be  
14 connected at the commencement of habitation to existing community or  
15 public water and sewerage systems including sewage treatment works; or

16 (v) in a city having a population of one million or more persons,  
17 fewer than one thousand total residential units in a building in which  
18 no more than twenty percent of the floor area consists of commercial or  
19 community facility uses to be connected at the commencement of habita-  
20 tion to existing community or public water and sewerage systems includ-  
21 ing sewage treatment works.

22 (b) To be determined as a "qualifying action" under paragraph (a) of  
23 this subdivision, such multiple dwelling shall:

24 (i) be located in a census tract defined as an urbanized area or an  
25 urban cluster by the federal Census Bureau;

26 (ii) be located on previously disturbed land;

27 (iii) qualify as affordable housing, as shall be determined by the  
28 division of housing and community renewal, relative to the municipality  
29 or county, as shall be determined by the division of housing and commu-  
30 nity renewal, in which it is located;

31 (iv) not be located in an area:

32 (1) projected to experience flooding in the event of sea level rise  
33 greater than or equal to the high-medium projection by year twenty-one  
34 hundred as set forth in regulations promulgated pursuant to section  
35 3-0319 of this chapter, or any other science-based projection of future  
36 sea level conditions deemed satisfactory by the commissioner;

37 (2) designated as a special flood hazard area by the federal emergency  
38 management agency, provided that this provision shall not apply to muni-  
39 cipalities that have adopted a building code that mitigates flood hazard  
40 risk by requiring new construction to be elevated above the base flood  
41 elevation as defined by the federal emergency management agency; or

42 (3) designated as a critical environmental area by the department;

43 (v) complete a Phase I Environmental Site Assessment pursuant to the  
44 federal Comprehensive Environmental Response, Compensation and Liabil-  
45 ity Act (42 U.S.C. Chapter 103), and complete testing for lead water  
46 and paint, asbestos, and radon, the results of which shall be submitted  
47 by the proposed developer of such multiple dwelling to the local agency  
48 responsible for approving or denying the application for such multiple  
49 dwelling. If the Phase I Environmental Site Assessment finds contam-  
50 ination that exceeds acceptable levels of contaminants for residential  
51 use as set forth in regulations promulgated pursuant to titles thirteen  
52 and fourteen of article twenty-seven and title five of article fifty-six  
53 of this chapter and related regulations governing environmental remedi-  
54 ation, the local agency responsible for approving or denying the appli-  
55 cation may require remediation of the site to applicable standards for

1 residential use prior to the issuing of a construction permit for  
2 construction of a multiple dwelling;

3 (vi) receive a written certification from a qualified environmental  
4 professional, as such term shall be defined by the department in regu-  
5 lation, that the construction of such multiple dwelling will not violate  
6 any state wetland laws under articles twenty-four and twenty-five of  
7 this chapter, or any rules or regulations promulgated thereto;

8 (vii) receive a written certification from a qualified environmental  
9 professional, as such term shall be defined by the department in regu-  
10 lation, that construction of such multiple dwelling, as proposed, will  
11 not violate any drinking water laws under article eleven of the public  
12 health law, or any rules or regulations promulgated thereto; and

13 (viii) receive certification by an architect licensed by the state  
14 that the building has been designed to meet one or more of the following  
15 building standards:

16 (1) the Leadership in Energy and Environmental Design Building Rating  
17 System (LEED) published by the United States Green Building Council for  
18 the category of certified gold, at minimum, as determined by a LEED  
19 accredited professional;

20 (2) Enterprise green communities review and certification; or

21 (3) Passive House Institute Passive House certification.

22 2. Actions with respect to construction of multiple dwellings subject  
23 to limited review. (a) Notwithstanding any law, rule or regulation to  
24 the contrary, actions with respect to the construction of new multiple  
25 dwellings that are not exempt from environmental review under subdivi-  
26 sion one of this section, and that are qualifying actions, shall not be  
27 subject to any environmental review standards under this article, or  
28 rules or regulations promulgated thereto, that do not consist of core  
29 environmental concerns, as such term shall be defined by the department  
30 in regulation. Topics of review that shall be exempt under this subdivi-  
31 sion as failing to meet the standard of core environmental concerns  
32 shall include, but not be limited to, traffic impacts, casting of shad-  
33 ing or shadows, impacts on views from neighboring buildings, consistency  
34 with community character, impacts on neighborhood character, and the  
35 resources of local school systems; except that, in the case of a disad-  
36 vantaged community, such topics of concern may include traffic impacts  
37 and the resources of local school systems.

38 (b) To be determined as a "qualifying action" under paragraph (a) of  
39 this subdivision, the proposed multiple dwelling shall:

40 (i) be located in a census tract defined as an urbanized area or an  
41 urban cluster by the federal Census Bureau;

42 (ii) be located on previously disturbed land;

43 (iii) qualify as affordable housing, as shall be determined by the  
44 division of housing and community renewal, relative to the municipality  
45 or county, as shall be determined by the division of housing and commu-  
46 nity renewal, in which it is located; and

47 (iv) not be located in an area:

48 (1) projected to experience flooding in the event of sea level rise  
49 greater than or equal to the high-medium projection by year twenty-one  
50 hundred as set forth in regulations promulgated pursuant to section  
51 3-0319 of this chapter, or any other science-based projection of future  
52 sea level conditions deemed satisfactory by the commissioner;

53 (2) designated as a special flood hazard area by the federal emergency  
54 management agency, provided that this provision shall not apply to muni-  
55 cipalities that have adopted a building code that mitigates flood hazard

1 risk by requiring new construction to be elevated above the base flood  
2 elevation as defined by the federal emergency management agency ; or  
3 (3) designated as a critical environmental area by the department.

4 3. Mandatory review. Every action that is a qualifying action under  
5 subdivision one or two of this section shall be subjected to a determi-  
6 nation by the local permitting authority of whether such action is  
7 exempt under subdivision one of this section, and if such action is not  
8 exempt under subdivision one of this section, whether such action is  
9 exempt under subdivision two of this section. If, after sixty days, the  
10 local agency responsible for approving or denying the application for  
11 such multiple dwelling has failed to return such a determination, the  
12 applicant may appeal to the division of housing and community renewal  
13 for a determination, and in such case the division shall render a deter-  
14 mination within sixty days of receipt of the application.

15 4. Historic sites. An action otherwise exempt from environmental  
16 review requirements under subdivision one of this section may be  
17 required to undergo environmental review pursuant to this article or the  
18 rules or regulations promulgated pursuant hereto on the basis that the  
19 multiple dwelling would be constructed wholly or partially within a  
20 historic site, provided, however that such action affects a contributing  
21 property within such historic site, and provided further that such envi-  
22 ronmental review is limited in its scope to such contributing property.  
23 An action shall not be required to undergo an environmental review under  
24 this subdivision solely on the basis that such the proposed multiple  
25 dwelling would be substantially contiguous to a historic site, or  
26 located in a neighborhood containing historic sites.

27 5. Wastewater treatment and stormwater management. (a) An action  
28 exempt from environmental review requirements under subdivision one or  
29 two of this section may provide concept plans to either the appropriate  
30 local governmental entity or the department that demonstrate that the  
31 multiple dwelling will have adequate wastewater treatment to accommodate  
32 the completed multiple dwelling for no less than thirty years. The  
33 department shall establish a method by which developers of proposed  
34 multiple dwellings may submit such concept plans pursuant to this para-  
35 graph. Upon submission of such concept plans, the local governmental  
36 entity or the department, as applicable, shall approve or deny such  
37 concept wastewater treatment plans no later than thirty days after  
38 submission of such plans.

39 (b) An action exempt from environmental review requirements under  
40 subdivision one or two of this section shall be required to maintain  
41 compliance with all applicable stormwater regulations.

42 6. Disadvantaged communities. The department shall require, by rule or  
43 regulation, that qualifying actions with respect to the construction of  
44 new multiple dwellings that are not exempt from environmental review  
45 under subdivision one of this section shall not:

46 (a) contribute more than a de minimis amount of pollution or any  
47 disproportionate pollution burden after the completion of construction;  
48 or

49 (b) directly displace low-income households by reducing, in aggre-  
50 gate, their residential housing opportunities in a disadvantaged commu-  
51 nity.

52 7. Authority of the commissioner. The commissioner shall be authorized  
53 to consult with any other state or local agency and to promulgate and/or  
54 amend any rules and/or regulations such commissioner shall deem neces-  
55 sary for the implementation of the provisions of this section; provided,  
56 however, that the department and the division of housing and community

1 renewal shall jointly promulgate such rules and regulations as they  
2 shall deem necessary for the implementation of subdivision six of this  
3 section.

4 § 3. Section 8-0105 of the environmental conservation law is amended  
5 by adding six new subdivisions 11, 12, 13, 14, 15 and 16 to read as  
6 follows:

7 11. "Historic site" means a historic building, structure, facility,  
8 site or district, or prehistoric site that is listed on the National  
9 Register of Historic Places (36 CFR Parts 60 and 63), or that is listed  
10 on the state register of historic places or that has been determined by  
11 the commissioner of parks, recreation and historic preservation to be  
12 eligible for listing on the state register of historic places pursuant  
13 to section 14.07 or 14.09 of the parks, recreation and historic preser-  
14 vation law, or historic buildings listed as landmarks by the New York  
15 city landmarks preservation commission.

16 12. "Contributing property" means a building, structure, facility, or  
17 site located within a historic site or district that wholly or partially  
18 contributes to such designation as a historic site.

19 13. "Dwelling" means any building or structure or portion thereof  
20 which is occupied or intended to be occupied in whole or in part as the  
21 home, residence, or sleeping place of one or more human beings.

22 14. "Multiple dwelling" means a dwelling that is either rented,  
23 leased, let or hired out, or sold, to be occupied, or is occupied as the  
24 residence or home of four or more separate individuals or groups of  
25 individuals living independently of each other, including, but not  
26 limited to, apartments, condominiums, and townhouses. A "multiple dwell-  
27 ing" shall not be deemed to include a class B multiple dwelling as  
28 defined by section four of the multiple dwelling law, or a hospital,  
29 convent, monastery, residential care facility, or a building used wholly  
30 for commercial purposes.

31 15. "Residential unit" means a room or group of rooms within a multi-  
32 ple dwelling that is designated as the living quarters for an individual  
33 or group of individuals living independently from other individuals  
34 occupying such multiple dwelling.

35 16. "Previously disturbed land" shall mean a parcel or lot of land  
36 that was occupied or formerly occupied by a building or otherwise  
37 improved or utilized one year prior to the effective date of this subdi-  
38 vision, and was not most recently used for commercial agricultural  
39 purposes.

40 § 4. Section 600 of the public housing law is amended by adding a new  
41 subdivision 6 to read as follows:

42 6. A covered housing agency in this state shall be subject, as appli-  
43 cable, to the provisions of article eight of the environmental conserva-  
44 tion law and any rules and/or regulations promulgated thereto.

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