

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

4 § 8-0119. Certain actions exempt or subject to limited review.

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

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

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

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1 (ii) fewer than fifty total residential units in a building in which
2 no more than twenty percent of the floor area consists of commercial or
3 community facility uses not to be connected at the commencement of habi-
4 tation to existing community or public water and sewerage systems
5 including sewage treatment works;

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

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

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

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

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

28 (ii) be located on previously disturbed land;

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

33 (iv) not be located in an area:

34 (1) projected to experience flooding in the event of sea level rise
35 greater than or equal to the high-medium projection by year twenty-one
36 hundred as set forth in regulations promulgated pursuant to section
37 3-0319 of this chapter, or any other science-based projection of future
38 sea level conditions deemed satisfactory by the commissioner;

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

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

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

1 cation may require remediation of the site to applicable standards for
2 residential use prior to the issuing of a construction permit for
3 construction of a multiple dwelling;

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

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

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

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

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

22 (3) Passive House Institute Passive House certification.

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

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

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

43 (ii) be located on previously disturbed land;

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

48 (iv) not be located in an area:

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

54 (2) designated as a special flood hazard area by the federal emergency
55 management agency, provided that this provision shall not apply to muni-
56 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 shall not:

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

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

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

1 shall deem necessary for the implementation of subdivision six of this
2 section.

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

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

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

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

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

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

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

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

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

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