

STATE OF NEW YORK

1075--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. EPSTEIN, GONZALEZ-ROJAS, GLICK, MAMDANI, GALLAGHER, REYES, JACKSON, CARROLL, BICHOTTE HERMELYN, AUBRY, BENEDETTO, TAPIA, MITAYNES, SIMON, ANDERSON, CRUZ, GIBBS, FORREST, CUNNINGHAM, BURDICK, RAGA, BURGOS, ARDILA, SEPTIMO, BORES, SEAWRIGHT, RAMOS -- read once and referred to the Committee on Local Governments -- 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:

1 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.

6 289. Basement and cellar local laws and regulations.

7 290. Tenant protections in inhabited basements and cellars.

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

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

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

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

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

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

15 2. The program established by such local law may provide to an owner
16 who converts a basement or cellar in accordance with a local law author-
17 ized by this article or who otherwise abates the illegal occupancy of a
18 basement or cellar: (a) amnesty from any civil or administrative liabil-
19 ity, citations, fines, penalties or any other enforcement of or prose-
20 cution for civil violations of this chapter, other state law or local
21 law or rules, and the zoning resolution of such city, and (b) relief
22 from any outstanding civil judgments issued in connection with any such
23 violation of such laws, rules or zoning resolution issued before the
24 effective date of this article; provided, however, that such local law
25 shall require that such amnesty or relief shall be available only to an
26 owner that has submitted an application for a conversion by a date
27 certain subsequent to the effective date of such local law and that such
28 date shall not be later than ten years after the effective date of such
29 local law.

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

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

51 (c) Any amendment of the zoning resolution necessary to enact such
52 program shall be subject to a public hearing at the planning commission
53 of such locality, and approval by such commission and the legislative
54 body of such local government, provided, however, that it shall not
55 require environmental review, including, not limited to, environmental
56 review conducted pursuant to article eight of the environmental conser-

1 vation law and any state and local regulations promulgated thereunder,
2 or any additional land use review.

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

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

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

31 4. Notwithstanding the local emergency housing rent control act of
32 1962 as amended, the local law authorized by this article shall include
33 protections against eviction and limitations on rent increases for base-
34 ment or cellar dwelling units that undergo legalization, including limi-
35 tations on rent increases for tenants returning to such units pursuant
36 to the provisions of subdivision two of this section.

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

39 ARTICLE VIII-C

40 LOANS TO OWNERS OF ONE TO FOUR UNIT PRIVATE AND MULTIPLE DWELLINGS

41 Section 480. Policy and purposes of article.

42 481. Definitions.

43 482. Loans to owners.

44 483. Conditions precedent to making loans to owners.

45 484. Servicing of loans by banking institutions and loan servic-
46 ing companies.

47 485. Interest reduction subsidies.

48 486. Mortgage recording tax exemption.

49 487. Rules and regulations.

50 488. Source of funds.

51 § 480. Policy and purposes of article. It is hereby declared and found
52 that there exists in cities with a population of one million or more a
53 seriously inadequate supply of safe and sanitary dwelling units, partic-
54 ularly for persons of low and moderate income. It further is found that
55 there exists in such cities many basements and cellars in one to four
56 unit dwellings, some of which are inhabited unlawfully, that could be

1 converted into safe and sanitary lawful dwelling units. It further is
2 found that such conversion and any associated rehabilitation or improve-
3 ment of such dwellings cannot be readily accomplished without public aid
4 in the form of low interest loans or grants to owners of such dwellings.
5 The creation of lawful and habitable dwelling units in basements and
6 cellars of one to four unit dwellings is hereby declared a public
7 purpose and a municipal purpose for which public monies may be loaned or
8 granted. In order to further such purpose, it is hereby declared that
9 additional provisions should be made to provide public monies for inter-
10 est reduction subsidies for private loans made by private investors for
11 such rehabilitation. The necessity in the public interest for the
12 provisions of this article is hereby declared as a matter of legislative
13 determination.

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

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

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

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

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

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

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

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

40 9. "Federal grant funds" shall mean any grants received from the
41 federal government for community development activities or for the reha-
42 bilitation or conservation of private or multiple dwellings.

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

48 11. "Owner" shall mean an individual, a partnership, a corporation or
49 other entity, including, but not limited to, a trust, or a joint tenan-
50 cy, tenancy in common or tenancy by the entirety holding record or bene-
51 ficial title in fee simple to an existing private or multiple dwelling
52 and the real property upon which it is situated, or the lessee thereof
53 under a lease having an unexpired term of at least thirty years. "Owner"
54 shall be deemed to also include a cooperative corporation or a condomin-
55 ium association.

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

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

16 14. "State grant funds" shall mean any grant received from the state
17 or any public benefit corporation for community development activities
18 or for the rehabilitation or conservation of private or multiple dwell-
19 ings.

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

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

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

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

38 2. Each loan shall be evidenced by a note executed by the owner of the
39 existing dwelling. Repayment of each such note shall be within a period
40 of forty years, provided that such period may be extended as the agency
41 may determine necessary to ensure the continued affordability or econom-
42 ic viability of the existing dwelling. The repayment shall be made in
43 such manner as may be provided in such note and contract, if any, in
44 connection with such loan, and may authorize such owner, with the
45 consent of the agency, to prepay the principal of the loan subject to
46 such terms and conditions as therein provided. In order to make any such
47 loan affordable to the owner, the agency may provide in such note and
48 contract that all of the outstanding principal of said loan may be self-
49 liquidated over a period of not less than fifteen years of continuous
50 compliance by the owner with a regulatory agreement or restrictive
51 covenant with or approved by the agency and upon the satisfaction of any
52 additional conditions specified therein. Such note and contract may
53 contain such other terms and provisions not inconsistent with the
54 provisions of this article as the agency may deem necessary or desirable
55 to secure repayment of the loan, the interest thereon, if any, and other
56 charges in connection therewith, and to carry out the purposes and

1 provisions of this article, including, but not limited to, providing
2 that the lien created by the note and mortgage, and, if applicable, any
3 regulatory agreement executed by such owner and agency or restrictive
4 covenant approved by such agency, may be recorded in an equal or subor-
5 ordinate position, or subsequently made equal or subordinate, to a lien
6 recorded by any private investor against such existing dwelling.

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

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

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

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

39 7. In making a loan under this article, the agency shall have the
40 power to participate in a loan made by any private investor. The agency
41 may enter into an agreement with a private investor to deposit funds
42 with such private investor to cover the agency's participation in loans
43 to owners of one to four unit existing private and multiple dwellings
44 with such funds advanced by such private investor to owners of such
45 existing dwellings. The portion of the loan funded by the agency may be
46 equal to or subordinate in lien to the portion of the loan funded by the
47 private investor and the note and contract may contain such terms with
48 respect to interest rate, if any, and time of payment of principal and
49 interest as determined by the agency. The agency may make provision,
50 either in the mortgage or mortgages or by separate agreement, for the
51 performance by the private investor of such services as are generally
52 performed by a banking institution which itself holds a mortgage,
53 including, without limitation, construction loan advances, construction
54 supervision, initiation of foreclosure proceedings, procurement of
55 insurance, and all other matters in connection with the financing,
56 supervision, regulation and audit of any such loan. In order to make the

1 loan affordable to the owner, the agency may provide an interest
2 reduction subsidy pursuant to section four hundred eighty-five of this
3 article, or may provide that all or part of the agency's portion of the
4 outstanding principal of any such participation loan may be self-liqui-
5 dated over a period of not less than fifteen years of continuous compli-
6 ance by the owner with a regulatory agreement or restrictive covenant
7 with or approved by the agency and upon the satisfaction of any addi-
8 tional conditions specified therein.

9 § 483. Conditions precedent to making loans to owners. 1. No such loan
10 shall be made to an owner of an existing private or multiple dwelling
11 unless such owner shall covenant in writing that so long as any part of
12 such loan shall remain unpaid or any requirement imposed as a condition
13 for making such loan that survives the repayment of such loan, includ-
14 ing, but not limited to, in a regulatory agreement executed pursuant to
15 subdivision two of this section or a restrictive covenant approved by
16 such agency, remains in effect: (a) the owner or managing agent or oper-
17 ator of such dwelling shall permit the duly authorized officers, employ-
18 ees, agents or inspectors of the agency to enter in or upon and inspect
19 such dwelling at all reasonable hours; (b) the agency by such duly
20 authorized representatives as aforesaid shall have full power to inves-
21 tigate into and order the owner of such dwelling to furnish such reports
22 and information as it may require concerning the conversion of the base-
23 ment or cellar in such dwelling and all other rehabilitation or improve-
24 ments funded with such loan and shall have full power to audit the books
25 of said owner with respect to such matters; and (c) if the basement or
26 cellar to be converted is in a multiple dwelling, the owner will submit
27 to the agency annually a statement of income and expenses of such dwell-
28 ing, in such form as shall be approved by the agency.

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

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

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

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

51 § 485. Interest reduction subsidies. Notwithstanding the provisions of
52 any general, special or local law, the city, acting through the agency,
53 is authorized to provide, or contract to provide, interest reduction
54 subsidies for loans made by private investors to owners of one to four
55 unit existing private or multiple dwellings pursuant to paragraph (a) of
56 subdivision one of section four hundred eighty-two of this article, if

1 such owners would have been eligible under the provisions of this arti-
2 cle for a loan made by the city pursuant to this article.

3 § 486. Mortgage recording tax exemption. Notwithstanding any incon-
4 sistent provision of law, mortgages to secure a loan made pursuant to
5 the provisions of this article shall be exempt from the mortgage record-
6 ing taxes imposed by article eleven of the tax law.

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

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

12 § 3. This act shall take effect immediately.