

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

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

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

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

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

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

1 require environmental review, including, not limited to, environmental  
2 review conducted pursuant to article eight of the environmental conser-  
3 vation law and any state and local regulations promulgated thereunder,  
4 or any additional land use review.

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

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

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

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

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

#### 41 ARTICLE VIII-C

#### 42 LOANS TO OWNERS OF ONE TO FOUR UNIT PRIVATE AND MULTIPLE DWELLINGS

#### 43 Section 480. Policy and purposes of article.

#### 44 481. Definitions.

#### 45 482. Loans to owners.

#### 46 483. Conditions precedent to making loans to owners.

#### 47 484. Servicing of loans by banking institutions and loan servic- 48 ing companies.

#### 49 485. Interest reduction subsidies.

#### 50 486. Mortgage recording tax exemption.

#### 51 487. Rules and regulations.

#### 52 488. Source of funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 shall be deemed to also include a cooperative corporation or a condomin-  
2 ium association.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 § 3. This act shall take effect immediately.