

# STATE OF NEW YORK

3173

2009-2010 Regular Sessions

## IN ASSEMBLY

January 23, 2009

Introduced by M. of A. BRADLEY, PAULIN, LATIMER, GALEF, SPANO -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to creating the Westchester county workforce housing incentive program

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

1 Section 1. Legislative findings. The legislature hereby finds that it  
2 is the public policy of the state of New York to foster the goal of home  
3 ownership and the provision of affordable workforce housing in areas of  
4 the state, such as the county of Westchester, where there is a shortage  
5 of such housing. It is further found by this legislature that local  
6 governments have a responsibility to assist in the providing of a fair  
7 share of the regional need for affordable housing. Further, each local  
8 government has the responsibility to establish a land use plan for its  
9 community that provides balanced and diverse housing options for all  
10 segments of the community.

11 This act shall provide that when five or more residential units or  
12 mixed-use development with five or more residential units are seeking  
13 approval to be built, Westchester county's local governments in exchange  
14 for a density bonus on site shall require that as a condition of  
15 approval for such site plans and subdivisions the provision of afforda-  
16 ble workforce housing in an amount equal to at least ten percent of the  
17 housing units be set aside. In the alternative, where a local government  
18 determines that the provision of suitable affordable workforce housing  
19 may not be provided on site, that in lieu of said requirement, in  
20 exchange for a density bonus, either a payment may be made of a reason-  
21 able sum to be determined by the local government for the purpose of  
22 affordable workforce housing, which sum shall constitute a trust fund  
23 for that purpose, or other land and affordable workforce housing units  
24 constructed thereon may be provided off-site. It is the intent of the  
25 legislature that the density bonus offered by local governments pursuant

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

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1 to this act shall contribute significantly to the economic feasibility  
2 of affordable workforce housing in new residential or mixed-use develop-  
3 ments.

4 § 2. The general municipal law is amended by adding a new article 16-B  
5 to read as follows:

6 ARTICLE 16-B

7 WESTCHESTER COUNTY WORKFORCE HOUSING INCENTIVE PROGRAM

8 Section 699-h. Definitions.

9 699-i. Westchester county workforce housing incentive program.

10 699-j. Technical assistance for Westchester county workforce  
11 housing incentive program.

12 § 699-h. Definitions. As used in this article the following terms  
13 shall mean:

14 1. "Affordable workforce housing" means housing for individuals or  
15 families at or below eighty percent of the median income for the West-  
16 chester county primary metropolitan statistical area as defined by the  
17 federal department of housing and urban development. For the purposes of  
18 this section, the affordable workforce housing units shall be of  
19 consistent design to those of the rest of the development.

20 2. "Density bonus" means a density increase of at least ten percent,  
21 unless a lesser percentage is elected by the applicant over the other-  
22 wise maximum allowable residential density or floor area ratio if part  
23 of a mixed-use development under the applicable zoning ordinance and  
24 comprehensive plan as of the date of application by the applicant to the  
25 local government. All density calculations resulting in fractional units  
26 shall be rounded up to the next whole number. The granting of a density  
27 bonus shall not require, in and of itself, a comprehensive plan amend-  
28 ment, zoning change or other discretionary approval. The density bonus  
29 shall not be included when determining the number of affordable work-  
30 force housing units that constitute ten percent of the total.

31 3. "Local government" means the county of Westchester, or any village,  
32 city or town within such county.

33 § 699-i. Westchester county workforce housing incentive program. 1.  
34 When a local government approves a subdivision plat or site plan for  
35 five or more residential units or a mixed-use development that incorpo-  
36 rates five or more residential units, such local government shall  
37 require of the applicant:

38 a. in exchange for a density bonus, the set aside of at least ten  
39 percent of such units for affordable workforce housing on site; or

40 b. upon the local government making a finding that the set aside of at  
41 least ten percent of such units for affordable workforce housing would  
42 have a specific adverse impact upon health, safety or the environment  
43 for which there is no feasible method to satisfactorily mitigate or  
44 avoid the specific adverse impact, the payment of a reasonable fee,  
45 based upon the fair market value of the additional lots or units result-  
46 ing from the density bonus, to the local government that shall consti-  
47 tute a trust fund to be used exclusively by the local government for the  
48 purpose of providing affordable workforce housing by acquiring land for  
49 the specific purpose of providing affordable workforce housing or  
50 constructing affordable workforce housing; or rehabilitating structures  
51 for the specific purpose of affordable workforce housing. All fees  
52 collected by the local government as provided in this section shall be  
53 in exchange for a density bonus and shall be deposited in a single trust  
54 fund for the local government and shall be kept in trust and separate  
55 and apart from all other monies. Moneys in such trust fund shall be  
56 deposited and secured in the manner provided by section ten of this

1 chapter. Pending expenditures from such trust fund, moneys therein may  
2 be invested in the manner provided in section eleven of this chapter.  
3 Any interest earned or capital gain realized on the moneys so deposited

4 or invested shall accrue to and become part of such trust fund; or

5 c. in exchange for a density bonus, the provision of other lands and  
6 construction of the affordable workforce housing units that are not part  
7 of the site plan or subdivision plat where it is determined by the local  
8 government that suitable affordable workforce housing cannot be provided  
9 on site.

10 2. The local government shall provide an applicant, subject to the  
11 provisions of this article, a density bonus for providing the required  
12 affordable workforce housing units. The local government shall grant the  
13 additional density bonus unless such local government makes a written  
14 finding, based upon substantial evidence, that the density bonus is not  
15 required in order to provide affordable workforce housing or that the  
16 density bonus would have a specific adverse impact upon health, safety  
17 or the environment for which there is no feasible method to satisfac-  
18 torily mitigate or avoid the specific adverse impact.

19 3. Within one year of the effective date of this article, the local  
20 government shall adopt an ordinance or local law that specifies how the  
21 local government shall implement this article, including provisions  
22 specifying how density bonuses will be provided. The local government  
23 shall also establish procedures for waiving or modifying development and  
24 zoning standards that would otherwise inhibit the utilization of density  
25 bonuses on specific sites. The local government's ordinance or local  
26 law shall ensure the continued affordability of all affordable workforce  
27 housing units for a period of thirty years, or a longer period of time  
28 if required by a mortgage financing assistance program, a mortgage  
29 insurance program or a rental subsidy program.

30 4. Within one year of the effective date of this article, the local  
31 government will develop a strategy for utilizing the monies in the trust  
32 fund within three years of such moneys being collected.

33 5. A local government may enter into intermunicipal agreements with  
34 contiguous local governments to meet the purposes of this article.

35 § 699-j. Technical assistance for Westchester county workforce housing  
36 incentive program. The department of state shall provide, through its  
37 office of local governments services, technical assistance to local  
38 governments that are drafting ordinances and local laws to comply with  
39 the provisions of this article.

40 § 3. This act shall take effect on the first of November next succeed-  
41 ing the date on which it shall have become a law.