



**NYSFAH Testimony before the Joint Legislative Budget Committee  
2023-2024 New York State Budget  
Housing Priorities and Funding  
1 March 2023**

Thank you, Chairwoman Krueger, Chairwoman Weinstein, Chairman Kavanagh, Chairwoman Rosenthal, and members of this joint legislative budget committee for the opportunity to participate in today's hearing regarding the 2023-24 New York State housing budget.

NYSFAH is the trade association for New York's affordable housing industry statewide. Its 375 members include for-profit and nonprofit developers, lenders, investors, attorneys, architects and others active in the financing, construction, and operation of affordable housing. Together, NYSFAH's members are responsible for most of the housing built in New York State that uses federal, state and local subsidies and incentives. Founded in 1998, NYSFAH is the nation's largest affordable housing trade group.

As we have highlighted on numerous prior occasions, New York State has been in the midst of a housing crisis for many years, with millions of New Yorkers having to pay 30 to 50 percent of their incomes, *and more*, simply for housing. The Legislature has recognized that this dramatic situation is unsustainable and you have enacted policies and provided critical funding to remedy this injustice, which has resulted in the development and preservation of thousands of units of affordable housing – and we are deeply grateful for your commitment and partnership in addressing the challenges associated with this fundamental need.

**Fund the Tenant Fund for Affordable Housing.**

With the suspension of the Emergency Rental Assistance Program (ERAP), there is a need for a one-time funding source to pay the rent arrears for particularly vulnerable tenants and to ensure the continued financial viability of affordable buildings, some of which are no longer able to make critical repairs, to renovate units for re-rental, or even to pay their mortgages.

The Tenant Fund for Affordable Housing (TFAH) would resolve thousands of eviction proceedings, address rent arrears, provide tenants with post-payment eviction protections, and rescue our hardest hit affordable housing buildings. TFAH would also provide aid to public housing authorities that are struggling with rent arrears.

We are requesting that New York State appropriate \$2 billion for TFAH, with the final funding amount being based on data from city and state housing agencies' surveys. Under this proposal, housing operators would submit claims in collaboration with tenants. The program would prioritize affordable and public housing. It would address several priority goals:

- Provide vital help to vulnerable tenants - those on disability, with documented unemployment, or with approved but unpaid ERAP applications:
  - If approved, there would be payment for up to 18 months of rental arrears, with 50% of the funding from TFAH and 50% in the form of rent forgiveness by the housing operator; and,
  - Tenants would receive retrospective eviction protection for the specific months of arrears paid by the program.
- Assist other tenants with arrears:
  - If approved, there would be payment for up to 12 months of rental arrears, with 1/3rd of the payment from TFAH, 1/3rd in rent forgiveness from the housing operator, and the tenant being responsible for only 1/3rd of any owed arrears;
  - Tenants would have up to 36 months to pay their portion of arrears; and,
  - Tenants would receive retrospective eviction protection for non-payment of rent for the specific months of arrears paid by the program.
- Non-participating tenants:
  - Housing operators could independently apply for up to 12 months of arrears funding from TFAH and receive 50% of the arrears owed.
  - Tenants would not receive any protections provided to tenants as referenced above.
- Public housing authorities:
  - NYSFAH supports direct aid to public housing authorities across the state, including NYCHA, that have significant rental arrears. Current estimates are that the total arrears owed to public housing authorities is approximately \$500 million, with 90% of that total owed to NYCHA.

**Pass the Governor's Housing Compact.** The Governor's Housing Compact would directly address New York's housing crisis by increasing the supply of homes. The state needs 817,000 more housing units over the next decade to meet current and future demand. Meanwhile, the state created 1.2 million new jobs over the last decade while only adding 400,000 homes, resulting in skyrocketing rents and unaffordable purchase prices.

This compact would allow more housing in the places that make sense – near transit and within already developed areas. And the Compact would achieve this while still allowing communities to determine how and where they change their zoning.

Also, the Compact would directly address New York's fair housing challenge. New York has the most segregated school system in the U.S. and the NYC metro area is the second most segregated metropolitan area in the country. The single greatest obstacle to building affordable housing is local zoning, which typically forbids the development of multifamily housing. Not only would the Compact spur communities to allow multifamily housing, it would also directly incentivize affordable housing locally by double weighting in-housing growth calculations.

New York has fallen behind its neighbors and competitors. California, New Jersey, Connecticut, and Massachusetts all have effective, statewide programs similar to the Compact for encouraging housing development and affordable housing. Housing in New Jersey is significantly more affordable than in New York, in part, because of its statewide housing system.

New York needs to seize the moment and pass the Compact in 2023.

### **Renew and Strengthen the State Historic Tax Credit**

We urge the Legislature to renew the State Historic Tax Credit for at least ten years, to expand it to include “white elephant” structures, and to allow it to be sold to different investors than federal credits from the same project.

The state historic tax credit fulfills critical community development goals: it preserves historic structures otherwise at risk of demolition; it revitalizes disinvested communities with affordable housing; and it adds housing stock in walkable, developed areas. From 2010 to present, the state historic tax credits were responsible for the creation of 8,542 units of affordable housing and 21,929 housing units total. Unlike other housing capital sources, state historic tax credits are an as-of-right equity source not limited by budget or bond volume cap, making them an extremely important part of any capital stack.

A.2889 (Woerner) / [S.4174 \(Kennedy\)](#) would renew the program for ten years and expand the credit up to \$15 million for “white elephant” projects, defined as projects with at least \$50 million of renovation costs where the building has been vacant for 10 of the last 15 years. The New York State Historic Preservation Office (SHPO) has a list of approximately 40 such buildings across the state. We urge the Legislature to incorporate the key provisions from this legislation into the final budget.

Additionally, we urge the Legislature to allow separate tax credit investors. Current law unintentionally depresses the value of all the tax credits in the deal, *including the federal Low Income Housing Tax Credit (LIHTTC)*. The same investor must purchase both the state and federal tax credits in an affordable housing project, and many markets only have a single investor.

To fix this, the law should be amended to allow the state historic tax credits to be sold to a different investor from the federal tax credits. This would bring more equity to the project at no cost to the taxpayer.

**Scaffold Law.** We urge the Legislature to reform the Scaffold Law (Labor Law §§ 240 and 241), which holds owners absolutely liable when a worker is injured in a gravity-related accident, even if the employee or third-party contractor is negligent. The law is unfair and outdated, and it has contributed to skyrocketing insurance rates and driven most insurance companies from the New York market - adding substantial costs to general liability coverage for affordable housing developments. Today, insurance accounts for 10% of construction costs

for affordable housing in NYC alone, depriving it of hundreds of potential affordable units every year.

We support reforming the law with commonsense amendments including a standard that considers the respective negligence of the builder, the employee and/or contractor in determining damages and compensation. This would save the State millions of dollars and result in more affordable housing production overall.

**Repeal the 12.0 cap on Residential FAR in NYC.** The Executive Budget has proposed, and we support, that the City and Empire State Development be authorized to override the Multiple Dwelling Law's cap on residential density in New York City. This limitation is an anachronism, and its repeal is long past due. The City will then be able to upzone high-opportunity neighborhoods and map Mandatory Inclusionary Housing, a crucial step for neighborhood integration, affirmatively furthering fair housing, and creating affordable housing at no cost to taxpayers. Additionally, this will allow Empire State Development to develop areas to their full potential, achieving statewide goals in the process.

**Pass Affordability Plus.** This legislation would update New York City's affordable housing finance powers for today's challenges:

- HPD would be able to lend for lengths of time beyond 30 years. By decreasing carrying costs through longer loan terms, this will allow the City to stretch its subsidy dollars, achieve longer affordability terms, and serve lower AMIs.
- HPD would be able to finance the development of non-residential uses on site, such as daycare centers and open space amenities, which are often in high demand.
- HPD would be empowered to help mission-driven organizations acquire and preserve naturally occurring affordable multifamily properties that otherwise might be repositioned as market rate rentals.

The City's affordable housing finance powers were created during a time period in which City-owned land and buildings were plentiful, and the primary challenge was rehabilitation. Today, however, the City needs to be able to compete with the private sector in order to be able to fulfill its mission. This legislation will update the City's finance powers for our current challenges.

Thank you again for the opportunity to testify today and for your consideration of our budget requests. I welcome any questions or comments you may have.

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