CHAPTER 909

R. R.
3d Rdg. 215 Print. 7162, 7298, 7324 ~~Rec. 801~~

Sen. INT. 4057

IN ASSEMBLY

May 26, 1965

Senate bill Pr. No. 5527, Int. No. 4057, by Senator WILSON—read once and referred to the Committee on Rules—committee discharged, bill substituted for Assembly bill Int. 5739, Pr. 6997, by Committee on Rules—amended on special order of third reading ordered reprinted as amended retaining its place on the special order of third reading and re-engrossed—again amended on special order of third reading, ordered reprinted, retaining its place on the special order of third reading and re-engrossed—lost on final passage—vote reconsidered and bill amended on third reading—ordered reprinted as amended, retaining its place on the order of third reading

AN ACT

To amend the real property actions and proceedings law and the New York city civil court act, in relation to special proceedings by tenants of multiple dwellings in the city of New York for an judgment directing the deposit of rents with the clerk of the civil court and the use thereof for the purpose of remedying conditions dangerous to life, health or safety and authorizing the appointment of an administrator to administer such moneys subject to the court's direction

Compared by _____

APPROVED

JUL 17 1965

Approved _____

Date 6-24-77
No. of printed bills 2
No. of exposures exclusive of bills 41

JEROME L. WILSON
22ND DISTRICT
CHAIRMAN
COMMITTEE ON PUBLIC WELFARE

THE SENATE
STATE OF NEW YORK
ALBANY

July 1, 1965

The Honorable Sol Neil Corbin
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Corbin:

This is in reference to the Governor's approval of the enclosed bill, S.I.4057.

It is my understanding that the City of New York's office in Albany has forwarded to you the city's memorandum in support of this measure.

S.I.4057 also has the support of the Association of the Bar of the City of New York and the Community Service Society. The memoranda from these organization has, I trust, been forwarded to you.

There was no bill during the past session that I had greater interest in than this. The terrible problem of slum housing continues to persist in my district. If this measure is signed into law, I shall personally do everything possible to educate tenants to take advantage of its provisions.

I would appreciate a pen certificate of the bill, if approved, although I assure you that I am one hundred times more interested in seeing the bill signed into law than in receiving any personal credit for its passage.

Sincerely,

Jerome L. Wilson

Jerome Wilson

01

S-4057

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Senate Int. 4057, Assembly Pr. 7324

This is a bill to amend the Real Property Actions and Proceedings Law and the New York City Civil Court Act to provide for special proceedings by tenants of multiple dwellings in New York City for judgments directing the deposit of rents with the Clerk of the New York City Civil Court to be used to remedy conditions in multiple dwellings which are dangerous to life, health or safety and to authorize the appointment of an administrator to administer such deposited monies subject to the Court's directions. The bill is a result of a legislative finding that there exists in New York City multiple dwellings with conditions that endanger the life, health or safety of their occupants and that additional enforcement powers are necessary in order to compel the correction of such conditions and increase the supply of adequate and safe dwelling units, the shortage of which constitutes a public emergency and is contrary to the public welfare.

The bill is to take effect immediately.

The bill amends the Real Property Actions and Proceedings Law by inserting a new article, Article 7A (§§ 769-782) and amends Section 204 of the New York City Civil Court Act to give that Court jurisdiction over such proceedings.

Proposed Article 7A of the Real Property Actions and Proceedings Law would provide a detailed and comprehensive plan for achieving its stated purposes. There are specific provisions giving jurisdiction to the New York City Civil Court; placing venue in the county where the real property is located; prescribing the grounds for the proceeding and the contents of the notice of petition and petition;

describing the time and manner of service of process and, in certain instances, permitting substituted service; providing for the trial of factual issues by the Court without a jury; and specifying the affirmative defenses which may be interposed.

The bill would authorize the Court to render a final judgment directing the deposit with the Clerk of the Court of rents due and to become due in the future and the use of such rents, subject to the Court's direction, to remedy the conditions found by the Court to exist. The bill would also permit, in the Court's discretion, an owner, mortgagee, lienor or other person having an interest in the property to undertake to remedy the conditions in the time and manner specified by the Court, if such person posts security for the performance of the work. In such cases, no deposit of rents would be ordered. If such person does not comply with the Court's order or if no such person applies, the Court is to appoint an administrator and direct him to apply the security posted or the deposited rents, as the case may be, to remedy the conditions. Such administrator must give a full accounting of receipts and expenditures and any surplus rents or security is to be returned to the owner or the person who posted the security, as the case may be, at the completion of the work.

The bill would also provide that deposit of rents pursuant to a judgment under this Article would be a valid defense to any action to recover real property for non-payment of rents and that any provision of any lease or agreement by which a tenant purports to waive the provisions of this Article is void as against public policy.

It should be noted that Section 775, which establishes affirmative defenses, does not include such things as failure of the petitioners to comply with the procedures regarding notice, service and the requisite number of petitioners. Since, however, such failures are jurisdictional in that they involve necessary prerequisites to the

proceedings, it would seem that the Court would have inherent power to recognize them as sufficient defenses even though they are not enumerated as such in the bill.

I find no legal objection to the bill.

Dated: July 14, 1965

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General

MEMORANDUM ACCOMPANYING COMMENTS ON BILLS BEFORE

THE GOVERNOR FOR EXECUTIVE ACTION

New York State Department of Social Welfare

July 12, 1965

SENATE	ASSEMBLY	Introduced by:
Int. 4057	Int.	Mr. Wilson
Assembly Pr. 7324	Pr.	

RECOMMENDATION: Approval

STATUTES INVOLVED: Real Property Actions and Proceedings Law and the New York City Civil Court Act

EFFECTIVE DATE: Immediately

DISCUSSION:

1. Purpose of bill: This bill would authorize the Civil Court of the City of New York, upon petition by one-third of the tenants of a multiple dwelling, to hear and determine whether the rent of all of the tenants of such multiple dwelling should be paid into court for use in correcting conditions which are dangerous to life, health or safety.

2. Summary of provisions of bill: This bill adds a new article 7-a to the Real Property and Proceedings Law and amends section 204 of the Civil Court Act to accomplish the above.

3. Prior legislative history of bill and similar proposals:

4. Known position of others respecting bill:

5. Budget implications:

6. Arguments in support of bill:

7. Arguments in opposition to bill:

8. Reasons for recommendation: This bill would provide an additional method for combatting slum conditions in New York City.

S-4057

THE JUDICIAL CONFERENCE
OF THE
STATE OF NEW YORK
270 BROADWAY
NEW YORK, N.Y. 10007
BARCLAY 7-1616

THOMAS F. McCOY
STATE ADMINISTRATOR

July 6, 1965

Hon. Sol Neil Corbin
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate Int. 4057, Assembly Pr. 7324

Dear Sol:

This will acknowledge your request for comment on the above-listed legislation.

This bill would amend the Real Property Actions and Proceedings Law and the New York City Civil Court Act. This bill involves several problems which I wish to bring to your attention.

The bill is designed to permit tenants of multiple dwellings in the City of New York to obtain an order in Civil Court directing the depositing of rents with the clerk of that court and the use of such deposits to remedy dangerous conditions in the multiple dwellings. The court would appoint an administrator to administer such moneys subject to the court's direction.

The purpose of this legislation is undoubtedly laudable. However, the Administrative Judge of the Civil Court has pointed out to me a variety of administrative as well as legal difficulties involved in this legislation. In the event that this bill becomes law it is estimated by the Administrative Judge that proceedings in the Landlord and Tenant Part of the Civil Court will increase about 25 percent or from a total of 60,000 to a total of 80,000 cases per year. These proceedings require immediate hearings, necessitating the assignment of additional judges, trial parts and non-judicial personnel. If the Civil Court is to receive and account for the deposits of rent, the processing thereof would require 15 to 20 extra non-judicial employees.

(6)

This bill has not been considered by the Administrative Board or the Judicial Conference. However, the Administrative Judge of the Civil Court of the City of New York is strongly opposed to this legislation. The purpose of the bill is excellent but its enactment would gravely burden the Civil Court. It seems to me that the most appropriate procedure would be to disapprove such legislation pending some study of its impact on the manpower and budget available to the Civil Court and until some simultaneous assistance to the Court be planned which would enable it to cope with such new jurisdiction.

Sincerely,

State Administrator

TFM:eh

S-4057 Adm. #5

THE CITY OF NEW YORK

ROBERT F. WAGNER, MAYOR

PAUL E. BRAGDON
ASSISTANT TO THE MAYOR
TEN EYCK HOTEL
ALBANY, NEW YORK

MEMORANDUM IN SUPPORT OF

S-Wilson I. 4057 Pr. 4531 NYC
A-Rules I. 5739 Pr. 6189 Rules

AN ACT To amend the real property actions and proceedings law and the New York city civil court act, in relation to summary proceedings by tenants of multiple dwellings in the city of New York for an order directing the deposit of rents with the clerk of the civil court and the use thereof for the purpose of remedying conditions dangerous to life, health or safety and authorizing the appointment of an administrator to administer such moneys subject to the court's direction

TO: LT. GOV. WILSON, SENATORS ZARETZKI, BRYDGES, GREENBERG, BARRETT, MACKELL, MARCHI, WILSON
SPEAKER TRAVIA, ASSEMBLYMEN WEINSTEIN, INGALLS, SATRIALE. STEPHENS. MARESCA. AMANN

The object of this bill is to add a new Article 7A to the Real Property Actions and Proceedings Law which would permit at least one-third of the tenants occupying a multiple dwelling in the City of New York in which there exists a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition imminently dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, to petition the Civil Court of the City of New York for an order to deposit accured or future rents with the Clerk of said Court and for the appointment of an administrator to use this money to remedy such dangerous, unhealthy or unsafe condition.

The measure specifically provides for the time and manner of service of the petition and notice of petition by which the proceeding is commenced, the contents of the petition, the answer and the trial.

The Court is authorized to appoint the landlord, an attorney, certified public accountant or licensed real estate broker to administer the deposited fund and to expend monies therefrom to remedy the unsafe and unhealthy condition and account therefor subject to the court's direction.

To assure expeditious determination of the proceeding it is required to be tried in no more than twelve days after service of the petition. In addition, no adjournment of the trial may be for more than five days unless all the parties consent thereto.

The proposal provides that it shall be a sufficient defense to the proceeding if it is established that:

(a) the unhealthy or unsafe condition alleged in the petition did not in fact exist;

(b) if it existed, such condition has in fact been remedied;

(c) the condition has been caused by the petitioning tenants or members of their families or their guests or by other residents of the multiple dwelling or their families or guests, or

(d) that any tenant or resident of the multiple dwelling has refused the respondent or his agent entry to a portion of the premises for the purpose of correcting the condition upon which the proceeding is based.

The measure further provides that:

1. It shall be a valid defense in any action to recover possession of real property, for the non-payment of rent or for use and occupation, that an individual has deposited the money claimed with the clerk of the court pursuant to an order issued as provided under this article.

2. If the petitioner is successful at trial the court shall make an order providing that (a) currently due and future rents shall be deposited with clerk of the court; (b) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the conditions set forth in the tenants petition, and (c) upon the completion of such work pursuant to the court's order, any remaining surplus shall be turned over to the owner together with a complete accounting.

3. The court shall require a written account of all expenses and income. Upon a motion of the court or any other interested party the court may require a presentation or settlement of the accounts. This is to be done on notice to all who appeared or have an interest in the proceeding.

4. Any provision of a lease or other agreement whereby any provision of this article for the benefit of a tenant, resident or occupant of a multiple dwelling is waived, is deemed to be against public policy and void.

At the present time tenants do not have an adequate remedy against landlords who allow unhealthy conditions to persist in a multiple dwelling. They may withhold rents, and if and when a proceeding is brought to evict them they may deposit the money in Court and the Court may stay the proceeding until the unhealthy conditions are corrected. The Court has no power to direct that the deposited monies be used for that purpose. Moreover, if the Court finds that the conditions which led to the rent withholding are not grievous enough to constitute a constructive eviction, the landlord is entitled to his rent and the tenant can be evicted for non-payment.

This measure would give to tenants an affirmative, expeditious procedure for remedying unhealthy conditions by using withheld rent monies, and would also avert the risk of tenant eviction in instances where the conditions complained of do not amount to a constructive eviction.

Accordingly, it is requested that this bill be favorably reported out of Committee and enacted into law.

Respectfully submitted,

Paul E. Bragdon
Assistant to the Mayor

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N.Y.

S 4057

July 1, 1965

S-Wilson I. 4057.A.Pr. 7324

AN ACT To amend the real property actions and proceedings law and the New York city civil court act, in relation to summary proceedings by tenants of multiple dwellings in the city of New York for an order directing the deposit of rents with the clerk of the civil court and the use thereof for the purpose of remedying conditions dangerous to life, health or safety and authorizing the appointment of an administrator to administer such moneys subject to the court's direction

Honorable Nelson A. Rockefeller
Governor of the State of New York
Albany, New York

Dear Governor:

The above bill is before you for executive action.

The object of this bill is to add a new Article 7A to the Real Property Actions and Proceedings Law which would permit at least one-third of the tenants occupying a multiple dwelling consisting of 6 or more apartments in the City of New York in which there exists a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition imminently dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, to petition the Civil Court of the City of New York for an order to deposit accrued or future rents with the Clerk of said Court and for the appointment of an administrator to use this money to remedy such dangerous, unhealthy or unsafe condition.

I attach a copy of the City Administration memorandum in support of the bill which was filed with the Legislative Leaders and Committee Chairmen when the bill was being considered in the Legislature. That memorandum discusses in detail the purpose and merits of the bill.

For the reasons contained in the attached memorandum, I request that you approve the bill.

Very truly yours,

ROBERT F. WAGNER, Mayor

By Paul Fitzpatrick
Assistant to the Mayor

'65 Admin. #5

THE CITY OF NEW YORK

ROBERT F. WAGNER, MAYOR

PAUL E. BRAGDON
ASSISTANT TO THE MAYOR
TEN EYCK HOTEL, ALBANY, N.Y.

MEMORANDUM IN SUPPORT OF

S - Wilson I. 4057 A. Pr. 7324

AN ACT To amend the real property actions and proceedings law and the New York city civil court act, in relation to summary proceedings by tenants of multiple dwellings in the city of New York for an order directing the deposit of rents with the clerk of the civil court and the use thereof for the purpose of remedying conditions dangerous to life, health or safety and authorizing the appointment of an administrator to administer such moneys subject to the court's direction

TO: LT. GOV. WILSON, SENATORS ZARETZKI, BRYDGES, GREENBERG, BARRETT, MACKELL, MARCHI, WILSON
SPEAKER TRAVIA, ASSEMBLYMEN WEINSTEIN, INGALLS, SATRIALE, STEPHENS, MARESCA, AMANN

The object of this bill is to add a new Article 7A to the Real Property Actions and Proceedings Law which would permit at least one-third of the tenants occupying a multiple dwelling consisting of 6 or more apartments in the City of New York in which there exists a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition imminently dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, to petition the Civil Court of the City of New York for an order to deposit accrued or future rents with the Clerk of said Court and for the appointment of an administrator to use this money to remedy such dangerous, unhealthy or unsafe condition.

The measure specifically provides for the time and manner of service of the petition and notice of petition by which the proceeding is commenced, the contents of the petition, the answer and the trial.

The Court is authorized to appoint the landlord, an attorney, certified public accountant or licensed real estate broker to administer the deposited fund and to expend monies therefrom to remedy the unsafe and unhealthy condition and account therefor subject to the court's direction.

To assure expeditious determination of the proceeding it is required to be tried in no more than twelve days after service of the petition. In addition, no adjournment of the trial may be for more than five days unless all the parties consent thereto.

The proposal provides that it shall be a sufficient defense to the proceeding if it is established that:

(a) the unhealthy or unsafe condition alleged in the petition did not in fact exist;

(b) if it existed, such condition has in fact been remedied;

(c) the condition has been caused by the petitioning tenants or members of their families or their guests or by other residents of the multiple dwelling or their families or guests, or

(d) that any tenant or resident of the multiple dwelling has refused the respondent or his agent entry to a portion of the premises for the purpose of correcting the condition upon which the proceeding is based.

The measure further provides that:

1. It shall be a valid defense in any action to recover possession of real property, for the non-payment of rent or for use and occupation, that an individual has deposited the money claimed with the clerk of the court pursuant to an order issued as provided under this article.

2. If the petitioner is successful at trial the court shall make an order providing that (a) currently due and future rents shall be deposited with clerk of the court; (b) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the conditions set forth in the tenants petition, and (c) upon the completion of such work pursuant to the court's order, any remaining surplus shall be turned over to the owner together with a complete accounting.

3. The court shall require a written account of all expenses and income. Upon a motion of the court or any other interested party the court may require a presentation or settlement of the accounts. This is to be done on notice to all who appeared or have an interest in the proceeding.

4. Any provision of a lease or other agreement whereby any provision of this article for the benefit of a tenant, resident or occupant of a multiple dwelling is waived, is deemed to be against public policy and void.

At the present time tenants do not have an adequate remedy against landlords who allow unhealthy conditions to persist in a multiple dwelling. They may withhold rents, and if and when a proceeding is brought to evict them they may deposit the money in Court and the Court may stay the proceeding until the unhealthy conditions are corrected. The Court has no power to direct that the deposited monies be used for that purpose. Moreover, if the Court finds that the conditions which led to the rent withholding are not grevious enough to constitute a constructive eviction, the landlord is entitled to his rent and the tenant can be evicted for non-payment.

This measure would give to tenants an affirmative, expeditious procedure for remedying unhealthy conditions by using withheld rent monies, and would also avert the risk of tenant eviction in instances where the conditions complained of do not amount to a constructive eviction.

This bill in its present form has the approval of and is supported by The Association of the Bar of the City of New York.

Accordingly, it is requested that this bill be favorably reported out of Committee and enacted into law.

Respectfully submitted,

Paul E. Bragdon
Assistant to the Mayor

THE CITY OF NEW YORK
CITY RENT AND REHABILITATION ADMINISTRATION
280 BROADWAY
NEW YORK 7, NEW YORK

HORTENSE W. GABEL
ADMINISTRATOR

PERSONAL & UNOFFICIAL

S-4057
Chap 909

July 9, 1965

Hon. Sol Neil Corbin
Executive Chamber
State Capital
Albany, New York 12224

RE: Senate Intro 4057
Assembly No. 7324

Dear Mr. Corbin:

While I have been for a short month and a half the Executive Assistant to the City Rent and Rehabilitation Administration, I write as a deeply interested and professionally involved attorney in the field of code enforcement, and housing repairs.

In my private practice I represented the vast majority of the Harlem "Rent Strike"; I am a member of the City Bar Association's Special Committee on Housing and Urban Development; I was the acting chairman of Citizen's Housing and Planning Council's 1965 Legislative Committee.

At the request of the City, the City Bar Association's Special Committee delegated me to work with the City's draftsmen after our committee's adversed comments on the technical aspects of the original print of this bill (at that time I was not with the City).

Simply stated, legally today the tenant without water, heat, or whose plaster has crumbled exposing the wood lathing - and extremely dangerous fire conditions-is without any effective remedy to correct such conditions.

With rare exception, we relegate the tenant and the entire code enforcement procedure to "arm twisting techniques" to hopefully force the correction of serious violations which frequently endanger

health and life. The law tries to "put on the pressure", a far cry from the actual correction of the condition.

Criminal Law prosecutions, rent reductions where the housing accommodation is rent controlled, the recently used with-holding of rent under sention 755 RPAPL are all aimed wide of the mark and realistically, considering the inordinate amount of time and effort involved, are tilting at wind-mills.

This bill provides for the first time a "repair orientated" approach to code violations. I know there is no point in my summarizing its provisions. I am not unmindful of its shortcomings, yet it offers tenants and I believe, particularly those living in bad housing, an opportunity to actually do something to have the water system fixed, the boiler repaired, the wall plastered. I recognize that a month's rent roll or several months rent roll may be inadequate at times to make the required repairs. [One of the reasons the bill was changed was to permit the use of the rents of all the tenants in the building to correct the dangerous conditions, not just the rents of the petitioning tenants.] However, my examination of the City's Emergency Housing Repair Program, just recently initiated, shows that the City is spending, and I am estimating, an average of about $1200 on a building. That being so, the rent roll may prove in practice to be adequate to remedy these drastic conditions.

The City's Emergency Housing Repair Program along with the rat extermination of the Health Department are the rare instances where we have become "repair orientated".

The City Bar Association along with Community Service Society who were involved in the drafting of the Assembly Intro and Print 299 introduced by Assemblyman Greene have made clear in their comments that their bill or Senator Mackell's version, Senate Intro 3684, Print 7219 are not a substitute nor an alternative to this bill for a new Article 7-A RPAPL. The Greene, Mackell bills are "arm twisting techniques." They are in the tradition from which the new Article 7-A abandons for actually achieving repairs.

Unfortunately, the frustration of attempting to obtain housing repairs can be too adequately documented, Community Service Society's "Code Enforcement for Multiple Dwellings in New York City, Part 2, Enforcement through Criminal Code Enforcement". I suspect that there can

be no more legally frustrating experience than striving to use, for example, Section 2040 of the Penal Law to obtain heat.

Clearly there should be an adequate remedy. I believe this bill is a broad step in that direction. It may well mean that people suffering under inhuman housing conditions may obtain through their own efforts better living. It may help to solve some of the frustration of the ghetto by permitting tenants to help themselves to improve their housing through use of the Civil Law.

Respectfully,

Bruce J. Gould

BJG:tn

BRUCE J. GOULD

S-4057

DIVISION OF HOUSING AND COMMUNITY RENEWAL

July 12, 1965

SENATE

Int. 4057
Pr. A 7324 Introduced by Mr. Wilson

RECOMMENDATION: Approval

STATUTES INVOLVED: Real Property Actions and Proceedings Law, Art. 7-a and New York City Civil Court Act, §204.

EFFECITVE DATE: Immediately

DISCUSSION:

1. Purpose of bill:

This bill adds a new article to the Real Property Actions and Proceedings Law authorizing a special (summary) proceeding by tenants of a multiple dwelling in the City of New York for a judgment directing the deposit of rents into court and their use for the purpose of remedying conditions dangerous to life, health or safety.

2. Summary of Provisions of Bill:

This bill permits one-third or more of the tenants of a multiple dwelling containing six or more apartments to maintain a special proceeding where there exists for five days lack of hot water, light, electricity, rodent infestation "or any other condition dangerous to life, health or safety". It is commenced by serving a notice of petition on the last registered owner and on every recorded mortgagee and lienor. Procedures are provided for serving and filing the petition and any written answers by the owner and other interested persons. Issues of fact are to be tried by the court without a jury. Complete defenses to the action would be that the alleged conditions never existed or have been remedied; that the conditions were caused by a tenant of a building or his family or friends; or that the owner was refused entry by any tenant to correct the conditions.

After trial or the owner's non-appearance, the court may dismiss the petition or direct the rents of both petitioning and non-petitioning tenants to be deposited with the Clerk of the Court as they become due, to be used under the court's direction to remedy the deficient conditions. The deposit of rent in court would be a complete defense in a non-payment of rent proceeding. Upon completion of the ordered work the owner would receive any surplus rent deposits and a complete accounting.

Alternatively, the owner or other interested person could seek permission to remedy the conditions. If ability to do the work is demonstrated and security posted, the court may order him to do the work within a fixed period. Should petitioners believe the work is not proceeding "with due diligence" they could apply for a hearing and the court could appoint an "administrator" who would use the security plus any part of the rent deposits needed to remedy the condition. Unused security would be returned.

In addition to the owner, mortgagees and lienors, the administrator may be any attorney, certified public accountant or real estate broker licensed to practice in New York. He may be paid a "reasonable amount" for his services from the rent money or security. The court must require itemized accounts which shall be open for inspection by any interested person and a full accounting must be filed with the court when the work is completed.

Any provision under a lease or other agreement to waive any provision of this article shall be void. "Owner" shall include "any person, firm or corporation directly or indirectly in control of a dwelling" except a receiver appointed pursuant to Section 309 of the Multiple Dwelling Law.

The New York City Civil Court Act, Section 204, which presently authorizes jurisdiction in this court over summary proceedings for recovery of real property, is amended to include jurisdiction over this new proceeding as well.

3. Prior legislative history of bill and similar proposals:

This bill is intended to provide still another means of code enforcement. Since criminal sanctions alone have not proved adequate, a number of additional approaches have been attempted; e.g. the present "receivership" law and proposed amendments thereto, and this year's rent impairment bills. This is the first time that a bill proposing direct affirmative action by tenants has passed both houses of the Legislature.

4. Known position of others respecting bill:

This bill has been approved by the Bar Association of the City of New York and the Community Services Society.

5. Budget implications:

None.

6. Arguments in Support of bill:

All constitutional and reasonable approaches to code enforcement ought to be given favorable consideration. Until now tenants could not take the initiative in civil courts to obtain code enforcement of major deficiencies in their dwellings, being limited to complaints to agencies and withholding rents. This bill authorizes tenants to take the initiative where major services are curtailed and compel use of their rent for restoration purposes. This would seem preferable to having a rent control agency reduce rents to compel restoration.

7. Arguments in opposition to bill:

The increasing control over landlords presumably would not be hailed by those potentially subject to such controls. While certain provisions of the bill could be refined, such as the determination of "one-third of the tenants occupying a multiple dwelling" (Query: by unit count or nose count; including or excluding commercial tenants?) such ambiguities can be cleared up by future amendments.

8. Reason for recommendation:

The principle of enabling tenants to initiate corrective action in the field of code enforcement would appear to be a useful and constructive supplement to present procedures.

B-20A (7/63)

30-DAY BILL

BUDGET REPORT ON BILLS

Session Year: 1965

SENATE

Pr:

Introduced by: Mr. Wilson

ASSEMBLY

Pr: 7324

Int: 4057

Int:

Law: Real Property Actions and Proceedings Law: New York City Civil Court Act Sections: Article 7-A (new) 204

Division of the Budget recommendation on the above bill:

Approve:_____ Veto:_____ No Objection:_____ No Recommendation: X

1. Subject and Purpose: To establish a special court proceeding in which tenants in a slum dwelling could pay their rent into court and ask for the appointment of a special administrator who would use the rentals to remedy dangerous housing conditions.

Summary of provisions: The present bill would add a new article, Article 7-A, to the Real Property Actions and Proceedings Law which would establish special court proceedings for tenants in New York City only. At least one-third of the tenants in a multiple dwelling may, under the bill, petition the court, alleging "any ... condition dangerous to life, health or safety, which has existed for five days." After a nonjury trial, the judge may direct the tenants to pay their rent into court. Thereafter, the landlord cannot collect the rent nor can he remove the tenants. The court may appoint a special administrator empowered to use the rents "to order the necessary materials, labor and services to remove or remedy the conditions" complained of. After the conditions have been corrected, the property is turned back to the owner with a full accounting of the moneys spent.

Arguments in support: New York City has had particular difficulty in locating absentee slumlords and in compelling them to correct serious violations of the building and fire codes. The Receivership Act (L. 1962, ch. 492) under which the city takes possession of the property has been subject to criticism because the city is often unable to recoup its financial outlay and unable to dispose of the property.

Widely publicized "rent strikes" in Harlem have drawn attention to the difficulty of enforcing city housing orders against absentee and invisible corporate slumlords. The present bill is one of several bills introduced this year to curb such slumlords (e.g., A.I. 715, A.I. 3339, S.I. 3684, A.I. 3199 and S.I. 5583 - all on Governor's desk).

Possible objections:

(a) The bill does not require that the landlord be given adequate notice of the dangerous condition, or given sufficient time in which to remedy the condition. This bill merely requires that the situation "has existed for five days" before the start of court proceedings, and the landlord would be first informed of the condition when he receives a copy of the court petition. Although the landlord would be permitted to defend himself in court by showing that the "condition or conditions have been removed or remedied," he would have "at least five and not

Date:_____ Examiner:_____

Disposition: Chapter No: Veto No.

more than twelve days" before the trial to do so. This is not sufficient time in which to correct a major problem (e.g., breakdown of a heating system). Although it could be argued that the present bill is tied into the Multiple Dwelling Law and that the landlord would have received adequate notice of the condition from the city Housing Department, the present bill does not expressly state that the landlord must be notified by city officials, nor does the bill state "a condition dangerous to life, health or safety as determined by the department of housing ..."

(b) This bill would draw the courts into the supervision and management of slum property rather than the city Department of Housing which has the staff and expertise to handle these problems.

Known position of others: New York City and the Community Service Society of New York urge enactment of this bill because it authorizes the court to utilize the rents and to act promptly to remove the dangerous condition.

Budget implications: There are no budget implications in this bill. Housing codes are enforced locally without State reimbursement and the special administrator appointed by the court would be compensated from the rents collected.

Recommendation: Because this office is not sufficiently expert in court administered housing code enforcement, we defer to the Division of Housing on this bill and make no recommendation.

Date: July 14, 1965 Examiner: Richard I. Nunez

RIN:fd

Disposition:

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

S-4057

COMMITTEE ON STATE LEGISLATION

ALVIN H. SCHULMAN, CHAIRMAN
200 PARK AVENUE
NEW YORK 10017
TN 7-5500

LEONARD SCHAITMAN, SECRETARY
200 PARK AVENUE
NEW YORK 10017
TN 7-5500

June 30, 1965

Re: S. Int. 4057, Pr. A. 7162, 7298, 7324 - Approved

Dear Mr. Corbin:

Answering your inquiry with respect to the above bill, we wish to inform you that we approve the measure.

The bill would amend the Real Property Actions and Proceedings Law and the New York City Civil Court Act so as to create a new special proceeding that may be instituted by one-third of the tenants of a multiple dwelling for the purpose of procuring a judgment authorizing the deposit of rents in court, which may then be used under court supervision for the remedying of dangerous conditions.

The bill supplements the existing provisions of section 755 of the Real Property Actions and Proceedings Law, which provides that when a landlord of a multiple dwelling institutes proceedings against the tenant for non-payment of rent, the tenant, on proof of the existence of dangerous conditions, may be permitted to deposit the rent in court pending curing of the violations. Section 755, of course, is of no value where the landlord does not institute dispossess proceedings, and provides no protection to the tenant who is fearful of eviction. The proposed measure gives tenants who organize the opportunity to take the initial step, to seek court help before they are threatened with eviction. The measure, if enacted, will not cure all the evils nor give the tenants all the protections that are believed necessary, but it will provide a new tool giving the tenants a direct right to seek relief on their own behalf. While we disapproved the bill as originally introduced as to form (see Bulletin No. 7, Report No. 128, page 477), the defects of form there noted have for the most part been cured and the ambiguities removed.

In order to avoid any misunderstanding, we wish to emphasize that this measure is in no way a substitute for the "rent impairing" bill (S. Int. 2967 - A. Int. 299), which was also enacted by the Legislature and is now before the Governor for consideration (see our report in Bulletin No. 7, page 471).

The latter bill provides that, if a violation has not been cured within six months after it has been noted by the Department, the tenants are relieved entirely of the obligation to pay rent. The measure to which this letter is directed covers the interim period and provides a means for curing serious violations that cannot wait six months for cure.

For the reasons stated, we approve the measure.

Sincerely,

Chairman

AHS:lp

Hon. Sol Neil Corbin
Executive Chamber
State Capitol
Albany, New York

This letter was prepared by the Association's Special Committee on Housing and Urban Development.

The Association of the Bar of the City of New York
Special Committee on Housing and Urban Development

No. 128.

S. Pr. 4531, Int. 4057 Mr. Wilson.

A. Pr. 6189, Int. 5739 Rules Committee.

Senate Committee: Affairs of The City of New York

Assembly Committee: Rules

An Act to amend the real property actions and proceedings law and the New York city civil court act, in relation to summary proceedings by tenants of multiple dwellings in the city of New York for an order directing the deposit of rents with the clerk of the civil court and the use thereof for the purpose of remedying conditions dangerous to life, health or safety and authorizing the appointment of an administrator to administer such moneys subject to the court's direction.

The bill is disapproved as to form

The bill, to take effect immediately, would add a new article 7-A to the Real Property Actions and Proceedings Law ("RPAPL") providing for a procedure for payment of rent into court where a multiple dwelling in New York City is affected by serious violations—the deposited rent to be used for correcting the violations. The bill also amends the New York City Civil Court Act to confer jurisdiction on that court to entertain such a proceeding. Though the objective of the bill is salutary, it is imperfectly drawn and must be disapproved as to form.

The bill's provisions parallel those of a summary proceeding for recovery of possession of real property (RPAPL art. 7). The conditions that can bring the procedure into operation are the existence, uncorrected for five days of: lack of heat, running water, light or electricity, or adequate sewage disposal facilities, or the existence, uncorrected for five days, of infestation by rodents, or of any other condition imminently dangerous to life, health, or safety.

The proceeding must be initiated by one-third or more of the tenants occupying the multiple dwelling, with service of the petition and a notice of petition upon the owner and lienors of record. The petition must allege the existence of one or more of the conditions described above and the nature of the work required to correct the condition, as well as an estimate of the cost thereof. The return date of the petition is short. Where triable issues are raised, the court tries them without a jury. Among the defenses that can be raised are that the conditions complained of do not in fact exist, or are tenant-created, or that the owner has been refused entry for the purpose of making the necessary repairs.

If the conditions complained of are found to exist and the other defenses are not established, the rent due on the date of the court's order and thereafter is paid into court, to be used, "subject to the court's direction," to correct the conditions complained of. However, the owner or a lienor, "or other person having an interest in the property," upon application to the court, may be allowed to do the necessary work on posting

"security," in which event the rents are not impounded. If no application is made to do the corrective work voluntarily, or if there is a default in carrying out the work, the court may appoint an administrator to carry forward the work and to apply for that purpose any "security" that has been posted as well as deposited rents. The administrator may be the owner, an attorney at law, a certified public accountant, or a licensed real estate broker; but if the owner acts as administrator, he must be bonded.

We have the following objections to the form of the bill.

1. The bill denominates the new procedure a "summary proceeding." CPLR 103(b), however, provides that "all civil judicial proceedings shall be prosecuted in the form of an action, except where prosecution in the form of a *special* proceeding is authorized" (emphasis added). A summary proceeding for the recovery of possession of real property is a "special proceeding" (RPAPL section 701) and it would seem that the proceeding established by the bill should be classified as a "special proceeding," to avoid any question that a proceeding other than one covered by the CPLR was intended.

2. The bill provides for service of the petition and notice on the owner of the property by delivery of a copy thereof to "the person designated pursuant to § D 26-3.1 of the Administrative Code of the City of New York as managing agent . . ." or if such person cannot be found then by affixing and mailing. Since section 325 of the Multiple Dwelling Law requires registration of the owner

and agent of all multiple dwellings we believe it would be better practice to provide for service—in person or by substitution—on the owner so registered. Such a provision would avoid the possibility of a constitutional question being raised as to the adequacy of notice to the person affected.

3. A lienor of record is required to be made a party to the proceeding (section 773); but it is not clear whether the lienor must answer in writing (as must the owner) if the lienor elects to answer, or whether it is intended that the owner must answer in writing but that the lienor may answer orally, as would be permitted in a summary proceeding for the recovery of possession (RPAPL section 743). Furthermore, the bill states that the court may enter an order upon default of the owner but then provides that this cannot be done if there is affirmative proof that a defense is established by a lienor [section 776(a)]. It would seem that what was meant is the interposition of a defense rather than its establishment at the time of the owner's default; but the present language is confusing.

4. It is not clear that the security that is required to be posted in the case of a voluntary performance of the work must be cash, although the implication seems to be that it must be cash [section 777 (a)(2)]. However, this should not be left to implication.

5. Besides the owner or lienor, any "other person having an interest in the property" may apply to the court for leave to perform the corrective work voluntarily [section 777 (a)]. How-

ever, if the work is not in fact performed and an application is made for the appointment of an administrator, there is no requirement that such "other person" be given notice of the application [section 777 (b)]. His right of participation in the proceeding should not be left to inference.

6. It is not clear who is intended to be covered by the phrase "other person having an interest in the property" with respect to those persons who may apply to have the corrective work done voluntarily (section 777). It cannot be intended to refer to lienors, who are explicitly referred to. Furthermore, when it comes to the administrator's accounting, the application for the accounting may be made by an "other person having an interest in [the] receipts and expenditures [of the administrator]" and if the application is made by someone else (*e.g.*, a lienor), such "other person" is a necessary party to the proceeding (section 779). Presumably, this "other person" is meant to cover a depositor of funds other than the owner or a lienor; the vague use of this general language leaves the matter to inference. As we have indicated, with both the owner and lienors provided for in the bill, it does not seem that there is any "other person" to whom the provisions we have referred to should apply.

For the reasons stated, the bill is disapproved as to form.

This report was prepared by the Association's Special Committee on Housing and Urban Development.

INTRODUCED BY ASSEMBLY RULES COMMITTEE

June 3, 1965 Report No. 296 A. Int. 5739 Pr. 6818

NEW YORK COUNTY LAWYERS' ASSOCIATION
14 Vesey Street - New York 10007

Report of Committee on the Civil Court on Assembly Bill Int. 2739 Pr. 6818, which seeks to amend the Real Property Actions and Proceedings Law and the New York City Civil Court Act, in relation to summary proceedings, by enacting a new Article 7-A, which would permit one-third or more of the tenants occupying a multiple dwelling in the City of New York to institute a proceeding for an Order directing the deposit of rents with the Clerk of the Civil Court and the use thereof for the purpose of remedying a lack of heat, running water, light, electricity, or adequate sewage disposal facilities or any other condition iminently dangerous to life, health or safety, which has existed for five days, or an infectation by rodents. In implementation of such Order, the Court is empowered to appoint an Administrator to spend the accumulated rent money to correct the conditions.

RECOMMENDATION: DISAPPROVAL

This bill would legalize rent strikes in New York City and would only worsen the strained landlord-tenant relationship which exists in many buildings in the City of New York.

The law presently provides sufficient criminal and civil sanctions which may be imposed upon landlords who permit conditions to exist in buildings which are dangerous to life, health or safety.

Respectfully submitted,

COMMITTEE ON THE CIVIL COURT

Harry Sokel, Chairman

Report prepared for
the Committee by
MR. JACK NEWTON LERNER

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S-4057

DEPARTMENT OF PUBLIC AFFAIRS
BERNARD C. FISHER, *Director*
MRS BARBARA REACH, *Staff Associate for Housing and Urban Development*

June 25, 1965

Hon. Sol Neil Corbin
Executive Chamber
State Capitol
Albany, New York 12224

Re: S Int 4057-A Pr. 7324
Mr. Wilson

APPROVED

Dear Mr. Corbin:

We note that the above bill is before the Governor for executive action. It permits one third or more of the tenants of a multiple dwelling to maintain a special proceeding in the civil court of New York City for a judgment directing the deposit of rents in court and their use for remedying dangerous conditions.

We approve the principle of this measure, which would enable tenants to take the initiative against a delinquent landlord and would authorize constructive use of rent moneys paid into court. We believe that it would be a useful supplement to the procedure now authorized by section 755 of the Real Property Actions and Proceedings Law. It should be understood that this bill does not conflict in any way with two rent abatement measures (A Int 299, Pr 299, Mr. Green, and S Int 3684, A Pr 7219, Mr. Mackell) which are also before the Governor. Those bills would be effective in situations where immediate repairs were not absolutely necessary. This bill would be useful in emergency situations by making it possible for the tenants to join together to bring the proceeding described above.

We urge the Governor to sign this important bill.

Sincerely yours,

Byard Williams

BW:cp 31

Byard Williams, M.D.
Chairman
Committee on Housing and
Urban Development

BILL MEMO

COMMERCE & INDUSTRY ASSOCIATION OF NEW YORK, INC.

H. C. TURNER, JR., *President*
RALPH C. GROSS, *Executive Vice President*
ARNOLD WITTE, *General Manager*

99 CHURCH STREET NEW YORK, N.Y. RE 2-5200
150 STATE STREET ALBANY, N.Y. HO 3-4319

A.INT. 5739 , PR. 6189) S.INT. 4057 , PR. 4531 , **DISAPPROVED**
(Wilson

S 4057

RENT STRIKES LEGALIZED

This bill would confer a new right of action on tenants of multiple dwellings in New York City. It would allow payment of rents into court if one-third or more of the tenants combine to do so, assuring a quick trial without a jury, by a judge empowered to order the rent moneys applied to remedying building conditions. The judge would also be empowered to appoint an administrator to manage the funds and be paid a fee out of the rents.

To assert their rights under this bill, tenants would not have to establish a violation in any city department or agency but would simply go into court on an allegation of rodent infestation or that there existed for five days either an unhealthy or unsafe condition, or a lack of heat, running water, light, electricity, or adequate sewage disposal. The landlord would be allowed a defense if he could prove that the condition had, in fact, been remedied, or had been caused by a striking tenant, or resulted from refusal by the tenant of access to the premises.

Foments rent strikes. The bill is dangerously drastic in its present form. It would encourage unscrupulous tenants to conspire to blackjack a landlord by mass withholding of rents: such a strike could force sudden financial distress if the rent money to pay for mortgage payments, taxes, wages, and operating expenses are withheld for an extended length of time. The allegation of any condition such as those listed in the bill is a simple matter for tenants bent on harassment of a particular landlord.

Burdens the courts. The bill makes no provision for an impartial determination by an administrative agency as to whether there is in fact a building violation. The burden of deciding tens of thousands of such complaints would suddenly be transferred to the civil court from the City agencies where they are now processed. There is no provision in the bill for reducing the budgets of those agencies or for augmenting the budgets of the courts.

No basis for emergency legislation. In the declaration introducing the bill, it is asserted without proof that a shortage of standard dwelling units presently constitutes "a public emergency" but no public hearings have been held nor are we aware of any studies or investigations which establish this as a fact. No present circumstances are serious enough to justify legal authorization for the tenants of an apartment development to gang up to withhold rents from the landlord on the strength of an assertion, not established by the governmental agency having jurisdiction, when the asserted condition may require only a few dollars to remedy while the total rent withheld may force insolvency on the building owner.

Present law sufficient. It should be noted, as well, that this bill is not limited to wilful violations. More important, there are ample civil and criminal remedies in the Penal Law, the Multiple Dwelling Law, the New York City Multiple Dwelling Code, and the New York City Health Code. See, especially, Penal Law §2040.

For all these reasons the bill should be defeated.

ARNOLD WITTE
Legislative Counsel

5/3/65

S-4057

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK
INCORPORATED
99 CHURCH STREET • NEW YORK, N. Y. 10007
Cable Address COMINDASSN • Telephone Rector 2-5200

June 30, 1965

Hon. Sol Neil Corbin
Counsel to the Governor
Executive Chamber
Albany, New York

Re: S. Int. 4057, A. Pr. 7324
DISAPPROVED

Dear Mr. Corbin:

This is a rent-strike bill applicable only to the City of New York. It would confer a new right of action on tenants of apartment houses containing six or more apartments. Whenever one-third of the tenants of such a structure band together they could apply to the Civil Court for an order directing that rents thereafter be deposited in court rather than paid to the landlord and that an administrator appointed by the court apply such deposited funds to remedying conditions of the building found by the court to be dangerous to life, health or safety or to a condition of rodent infestation. All that would be necessary for the tenants to show is that the dangerous condition existed for five days or that in fact there was some rodent infestation (without reference to duration). The application of the rents to the remedying of the asserted conditions would be ordered in preference to payment of wages for building service personnel, real estate taxes or water charges due, and any installments due for principal or interest on the mortgage.

This sweeping measure, apparently intended to encourage joinder of tenants for concerted action to strike financially at multiple dwelling owners, is not justified on grounds of necessity or otherwise. New York City now affords summary relief to individual tenants or groups of them through the Department of Buildings or by drastic reductions in rent ordered by the City's rent control agency. Other agencies ready to write violations and enforce them in court include the Department of Water Supply, Gas and Electricity, the Health Department, the Fire Department and the Sanitation Department. Moreover, the Department of Welfare and a growing number of social welfare agencies provide specialized referral service and even representation in filing complaints on behalf of tenants.

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In form, the bill raises several objections. There appears to be no sound basis of classification in conferring the new right of action on tenants in New York City and not in Buffalo or other cities subject to multiple dwelling regulations. Nor is there a logical basis for extending this right of action to tenants of a six-family house but not to tenants of a four-family house; both are subject to the same Multiple Dwelling Law. In short, this bill discriminates unjustifiably in conferring remedies.

It is noteworthy that in the operation of this measure the judge of a civil court in New York City would have to decide such questions of fact as whether the condition existed and whether it was dangerous to life, health or safety. This bill is apparently intended to allow the tenants of New York City's 150,000 multiple dwellings to avoid going to a departmental agency and to take their complaints directly into court.

As for the complaints themselves, the bill makes no provision for conditions which arise without knowledge of the landlord. In contrast, a long line of cases have construed the Multiple Dwelling Law requirements so that a landlord is not culpable for a condition of disrepair unless he was given notice or should have known about it. Neither §770 nor §775 in this bill provides for the defense that the condition occurred without notice to the landlord.

For all these reasons, and in view of the more reasonable rent abatement bill also passed in this session of the Legislature (A. Int. 299) we recommend a veto of this measure.

Cordially,

Arnold Witte
General Manager

AW:MMD

STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

8405 7

ARTHUR LEVITT
STATE COMPTROLLER

June 30, 1965

IN REPLYING REFER TO

REPORT TO THE GOVERNOR ON LEGISLATION

TO: The Honorable Sol Neil Corbin, Counsel to the Governor

The following bills are of "No Interest" to this Department:

ASSEMBLY

INT.	PR.
73	73
302	302
407	7198
627	627
960	960
996	7290
1095	7289
2075	2075
2098	2098
2233	S. 5744
2354	2360
2656	7315
2936	2954
3045	3063
3066	7291
3453	7221
3570	5477
3601	5285
3758	3800
3881	3966
4036	S. 5895
4083	4174
4091	7251
4397	4520
4561	S. 5951
4583	4706
4986	7215
5429	5707
5726	7335
5797	6423
5812	6438
5851	6533
5931	6987
6041	7332
6146	7282
6170	7328

SENATE

INT.	PR.
200	A. 7336
1182	A. 7309
1799	A. 7293
2941	3098
3287	3511
3574	3870
3651	3964
3652	3965
3674	A. 7337
3679	A. 7303
3794	4153
3795	4154
3870	4262
3893	4285
3923	5958
4017	5122
4057	A. 7324
4265	4773
4617	5736
4639	5777
4673	5859
4696	5911
4705	5925
4706	5926
4711	5937
4728	5964

ARTHUR LEVITT
State Comptroller

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By

Alfred W. Haight
First Deputy Comptroller