

**ASSEMBLY CONCURRENT  
RESOLUTION No. 119**

**STATE OF NEW JERSEY  
213th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

**Assemblywoman ALISON LITTELL MCHOSE**

**District 24 (Sussex, Hunterdon and Morris)**

**Assemblyman GARY R. CHIUSANO**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

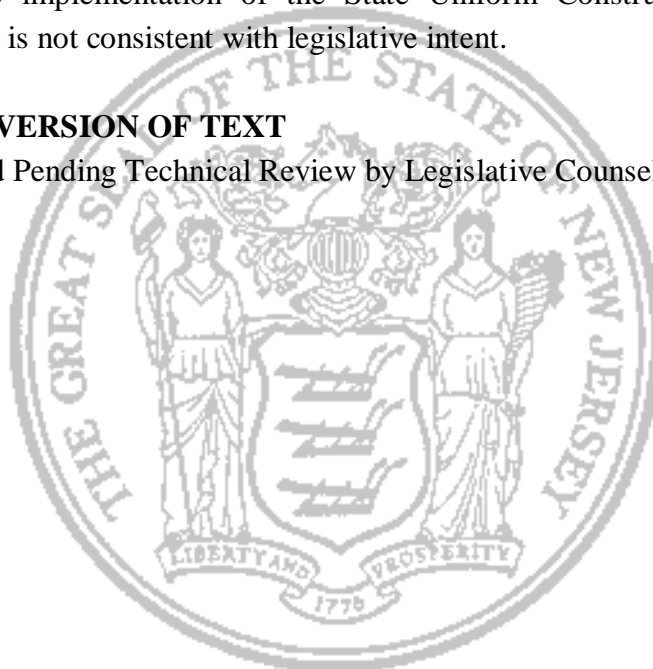
**Assemblymen Vas and Prieto**

**SYNOPSIS**

Determines that Department of Community Affairs proposed regulation requiring the implementation of the State Uniform Construction Code in campgrounds is not consistent with legislative intent.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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1 **A CONCURRENT RESOLUTION** calling for the rescission of proposed  
2 agency rules pursuant to Article V, Section IV, paragraph 6 of  
3 the Constitution of the State of New Jersey.  
4

5 **WHEREAS**, The Department of Community Affairs has proposed for  
6 adoption a certain regulation requiring the regulation of recreational  
7 vehicles as manufactured housing, in conflict with federal and State  
8 law;

9 **WHEREAS**, the department is seeking to impose its interpretation  
10 concerning its powers to regulate certain recreational vehicles as  
11 housing in order to overturn a decision of the Sussex County  
12 Construction Board of Appeals that held that the department could  
13 not require these recreational vehicles to comply with State  
14 regulations governing manufactured housing;

15 **WHEREAS**, the proper route to overturn a county construction board of  
16 appeals decision by a department is to file, within the time  
17 prescribed by statute, an appeal in Superior Court, rather than  
18 attempting to overturn an unfavorable decision through an abuse of  
19 the rulemaking procedures;

20 **WHEREAS**, Within these regulations, entitled a “prospective code  
21 interpretation” of the State Uniform Construction Code, the  
22 Department of Community Affairs incorrectly defines certain  
23 recreational vehicles, which are treated elsewhere under State law  
24 as motor vehicles, as housing, and mandates their inclusion under  
25 the State Uniform Construction Code;

26 **WHEREAS**, The Department of Health and Senior Services regulates  
27 campground facilities within which recreational vehicles may be  
28 sited within the State;

29 **WHEREAS**, certain recreational vehicles of dimensions greater than  
30 400 square feet are not exempted from the federal definition of  
31 manufactured housing, and thus are not permitted in campgrounds;

32 **WHEREAS**, recreational vehicles of dimensions 400 square feet and  
33 less are not regulated as manufactured housing by the federal  
34 government, are intended for recreational purposes, are not  
35 permanent housing, and are permitted in campgrounds without  
36 compliance with the regulations governing manufactured housing;

37 **WHEREAS**, federal law clearly preempts all States from establishing  
38 safety and manufacturing standards for manufactured housing and  
39 limits them to promulgating standards for stabilizing and installing  
40 manufactured housing; and

41 **WHEREAS**, the Department of Community Affairs is without lawful  
42 authority under State law to regulate as housing or construction  
43 those recreational vehicles which do not meet the federal regulatory  
44 definition of manufactured housing; now, therefore

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46 **BE IT RESOLVED** by the General Assembly of the State of New  
47 Jersey (the Senate concurring)

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1 1. Pursuant to Article V, Section IV, paragraph 6 of the  
2 Constitution of the State of New Jersey, the Legislature may review  
3 any rule or regulation of an administrative agency to determine if  
4 the rule or regulation is consistent with the intent of the Legislature.

5  
6 2. The Legislature finds that the regulation proposed by the  
7 Department of Community Affairs concerning the applicability of  
8 the State Uniform Construction Code to certain recreational  
9 vehicles (N.J.A.C.5:23-9.3, PRN 2006-300) located within  
10 campgrounds is not consistent with legislative intent, in that the  
11 proposed regulation:

12 a. Is outside of the scope of the "State Uniform Construction  
13 Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), which is to  
14 ensure adequate maintenance of buildings and structures throughout  
15 the State and to adequately protect the safety and welfare of  
16 occupants or users of buildings and structures, but which act was  
17 not intended by the Legislature to regulate recreational vehicles  
18 utilized in campgrounds;

19 b. Is not consistent with the legislative intent of section 9 of  
20 "State Uniform Construction Code Act," P.L.1975, c.217  
21 (C.52:27D-127), as amended by section 4 of P.L.1995, c.54, which  
22 established the county construction board of appeals (CCBA), and  
23 under regulations promulgated to effectuate that act, requires that  
24 appeals from a decision of a CCBA be made to Superior Court  
25 within a set period of time, but did not provide for an alternative to  
26 that appeal process by permitting the decision to be overturned  
27 through the State agency rulemaking process; and

28 c. Did not consider the effect on small businesses operating  
29 campgrounds which currently do not permit manufactured housing  
30 on site, but which will be regulated under the proposed  
31 interpretation as if the campgrounds are manufactured housing  
32 parks, if certain-sized recreational vehicles are present, in violation  
33 of the intent of the regulatory flexibility analysis required to be  
34 conducted by the department pursuant to the "New Jersey  
35 Regulatory Flexibility Act," P.L.1986, c.169 (C.52:14B-16).

36  
37 3. The Clerk of the General Assembly and the Secretary of the  
38 Senate shall transmit a duly authenticated copy of this concurrent  
39 resolution to the Governor and the Commissioner of Community  
40 Affairs.

41  
42 4. The Department of Community Affairs shall, pursuant to  
43 Article V, Section IV, paragraph 6 of the Constitution of the State  
44 of New Jersey, have 30 days following transmittal of this resolution  
45 to amend or withdraw the proposed regulations or the Legislature  
46 may, by passage of another concurrent resolution, exercise its

1 authority under the Constitution to invalidate the proposed  
2 regulations or prohibit those regulations from taking effect.

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STATEMENT

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7 This concurrent resolution expresses the finding of the  
8 Legislature that regulations proposed for adoption by the  
9 Department of Community Affairs requiring the regulation of  
10 certain recreational vehicles as manufactured housing are not  
11 consistent with the legislative intent of several statutes.

12 The department states within its proposed regulation that it is  
13 seeking to impose its interpretation concerning its powers to  
14 regulate certain recreational vehicles as housing in order to overturn  
15 an unfavorable decision of the Sussex County Construction Board  
16 of Appeals (CCBA) that held that the department could not require  
17 these certain recreational vehicles to comply with State regulations  
18 governing manufactured housing. The Legislative intent as  
19 expressed through P.L.1995, c.54 is that the appeal of a  
20 construction board decision is to be made to the Superior Court;  
21 there is no provision in the statute for bypassing the appeal process  
22 with new regulations which seek to overturn a county construction  
23 board of appeals decision.

24 The proposed regulation is also inconsistent with the Legislative  
25 intent expressed in the "State Uniform Construction Code Act" that  
26 the code to be applied to buildings and structures, and is not  
27 intended, therefore, to apply to recreational vehicles, which  
28 application will occur under the proposed regulations for certain-  
29 sized recreational park trailers that are exempt under federal  
30 regulations from compliance with manufactured housing  
31 regulations.

32 Finally, the proposed regulation is not consistent with the  
33 legislative intent of the "New Jersey Regulatory Flexibility Act,"  
34 N.J.S.A.52:14B-16, because the department did not consider the  
35 effect on small businesses that are campgrounds for recreational  
36 purposes only and which do not permit manufactured housing on  
37 site, but which will be regulated under the proposed regulation as if  
38 the campgrounds are manufactured housing parks, if certain-sized  
39 recreational vehicles are present on the campsites.

40 The Department of Community Affairs shall have 30 days  
41 following transmittal of this resolution to amend or withdraw the  
42 proposed regulation or the Legislature may, by passage of another  
43 concurrent resolution, exercise its authority under the Constitution  
44 to invalidate the proposed regulation or prohibit that regulation  
45 from taking effect.