

[First Reprint]

SENATE, No. 2577

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 23, 2009

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Mercer, Monmouth and Ocean)

Assemblywoman NILSA CRUZ-PEREZ

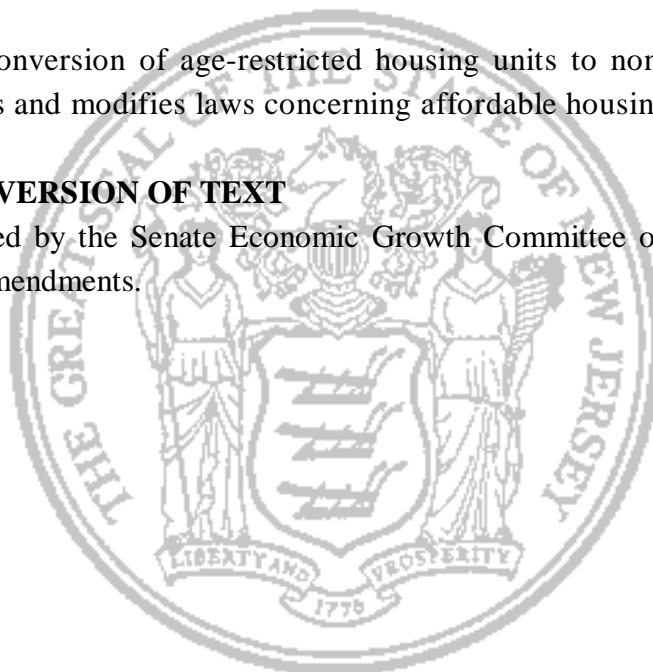
District 5 (Camden and Gloucester)

SYNOPSIS

Permits conversion of age-restricted housing units to non-age-restricted housing units and modifies laws concerning affordable housing.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on February 26, 2009, with amendments.



(Sponsorship Updated As Of: 3/17/2009)

1 AN ACT concerning ¹affordable housing and¹ the development of
2 non-age-restricted communities^{1,1} and supplementing ¹【Title 45
3 of the Revised Statutes】 P.L.1975, c.291 (C.40:55D-1 et seq.)
4 and P.L.1985, c.222 (C.52:27D-301 et al.)¹.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

- 8
9 1. The Legislature finds and declares that:
- 10 a. While the cost of housing in New Jersey has declined under
11 currently eroding economic conditions, the cost of both renting and
12 homeownership remains unaffordable to a large percentage of New
13 Jersey residents, including those who make vital contributions to
14 their communities such as teachers, nurses, police officers,
15 firefighters, and the general workforce population;
- 16 b. In recognition of this crisis, Governor Jon S. Corzine has
17 committed to producing and preserving 100,000 units of affordable
18 housing for low-, moderate- and middle-income families and
19 individuals over the next 10 years;
- 20 c. According to the 2000 U.S. Census, 55 percent of these
21 families are one and two person households, many of which are
22 unable to find homes and apartments designed to meet their needs;
- 23 d. While no policy is singularly responsible for current housing
24 conditions, zoning practices have resulted in a lack of land
25 approved for housing which meets the needs of households
26 requiring smaller housing units;
- 27 e. The shortage of affordably priced workforce housing has
28 been exacerbated in recent years by a municipal preference for age-
29 restricted housing which has resulted in an oversupply of age-
30 restricted housing approvals and an inability among the majority of
31 New Jersey's workforce to live near their jobs;
- 32 f. While the Legislature has created a State Housing
33 Commission, which has been charged with reviewing New Jersey's
34 housing limitations and its future needs to create a balanced housing
35 policy and plan appropriate for all New Jerseyans, it has not yet
36 commenced operation;
- 37 g. Although the maximum municipal percentage of affordable
38 fair share housing which may be met by age-restricted units in a
39 municipality has been reduced from 50 percent to 25 percent under
40 the recently adopted rules of the Council on Affordable Housing, a
41 mechanism is needed to permit ¹【a proposed】 an¹ age-restricted
42 development to change to a ¹【non-restricted】 converted¹
43 development to meet this rule, and to meet demographic needs; and

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted February 26, 2009.

1 h. Under currently deteriorating national economic conditions,
2 it is appropriate to take immediate action at this time to create the
3 opportunity to increase the production and supply of workforce
4 housing through the conversion of the over-supplied age-restricted
5 market to meet the needs of New Jersey's residents who require
6 smaller, more reasonably priced homes.

7
8 2. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 "Affordable" means a sales price or rent which meets the criteria
11 for low income or moderate income housing, as defined in section 4
12 of P.L.1985, c.222 (C.52:27D-304).

13 "Approving board" means the municipal or regional planning
14 board, zoning board of adjustment, or joint land use board that
15 issued the initial site plan or subdivision approvals for the given
16 age-restricted development.

17 "Age-restricted development" means a community that complies
18 with the "housing for older persons" exception from the federal
19 "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42
20 U.S.C. ss.3601 et seq.) for that community as set forth in section
21 100.301 of Title 24, Code of Federal Regulations.

22 "Attached housing" means housing units that share a common
23 wall.

24 "Converted development" means a proposed age-restricted
25 development that will be marketed instead with no age restrictions.

26 "Department" means the Department of Community Affairs.

27 "Developer" means the legal or beneficial owner or owners of a
28 lot or of any land proposed to be included in a proposed
29 development, including the holder of an option or contract to
30 purchase, or other person having an enforceable proprietary interest
31 in such land.

32 "Fair share plan" means the plan that describes the mechanisms
33 and the funding sources, if applicable, by which a municipality
34 proposes to address its affordable housing obligation as established
35 in the housing element, and includes the draft ordinances necessary
36 to implement that plan in accordance with section 10 of P.L.1985,
37 c.222 (C.52:27D-310) and the regulations adopted by the Council
38 on Affordable Housing to effectuate that section.

39 "Final approval" has the same meaning as defined in the
40 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

41 "Municipality" means any city, borough, town, township, or
42 village.

43 "Non-restricted ¹["development"] status¹ means ¹the status of¹
44 an age-restricted development that has ¹["been changed to an open
45 market development where the age restriction has been eliminated"]
46 received approval to become a converted development¹.

47 "Preliminary approval" has the same meaning as defined in the
48 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

1 “Residential Site Improvement Standards” means the technical
2 site standards promulgated by the Commissioner of Community
3 Affairs pursuant to the authority of P.L.1993, c.32 (C.40:55D-40.1).

4
5 3. a. During the period of time set forth in section 9 of P.L. ,
6 c. (C.) (pending before the Legislature as this bill), any age-
7 restricted development shall be eligible to be changed to a ¹[non-
8 restricted] converted¹ development, pending approving board
9 approval, provided that the development meets all of the following
10 conditions:

11 (1) preliminary or final approval for construction of the
12 development has been granted prior to the effective date of P.L. ,
13 c. (C.) (pending before the Legislature as this bill);

14 (2) the developer of the age-restricted ¹[community]
15 development¹ is not holding a deposit for ¹[the sale of] , or has not
16 conveyed,¹ any dwelling unit within the development;

17 (3) the developer of the age-restricted ¹[community]
18 development¹ agrees that an amount not exceeding 20 percent of the
19 units in the development will be provided as affordable units in
20 accordance with regulations promulgated by the Council on
21 Affordable Housing pursuant to the “Fair Housing Act,” P.L.1985,
22 c.222 (C.52:27D-301 et al.).

23 b. Any ¹[affordable] housing¹ unit which is provided under the
24 provisions of P.L. , c. (C.) (pending before the Legislature
25 as this bill) ¹, and which is affordable to households of low- and
26 moderate income,¹ shall automatically become part of a municipal
27 fair share plan, if applicable, and as such shall be eligible for credits
28 to meet the municipality’s obligation for affordable housing
29 pursuant to the “Fair Housing ¹[Act.]” Act,” P.L.1985, c. 222
30 (C.52:27D-301 et al.).¹

31 c. No affordable housing units complying with applicable
32 Council on Affordable Housing standards or market-rate housing
33 units associated with such a converted development shall be
34 construed as generating any growth share affordable housing
35 obligation for a municipality.

36
37 4. a. A developer seeking to change an age-restricted
38 development approval to a converted development approval shall
39 file an application with the approving board seeking an amendment
40 to the previously granted approvals requesting the authority to
41 develop the land as a converted development. At such time, the
42 developer shall also file a copy of said notice with the municipal
43 clerk of the municipality in which the development is located and
44 the developer shall provide notice prior to a hearing on the
45 application in the manner prescribed by section 7.1 of P.L.1975,
46 c.291 (C.40:55D-12).

1 (1) No application for an amended approval seeking the
2 authority to construct a converted development shall be considered
3 a “use variance” or other “d’ variance” application pursuant to
4 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
5 planning boards that initially granted approvals for the age-
6 restricted development and zoning boards of adjustment that
7 initially granted approvals for the age-restricted development shall
8 have the legal authority to grant amended approvals for a converted
9 development without the need to seek relief pursuant to subsection
10 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
11 intent of this bill that such converted developments are to be
12 considered permitted uses in the zoning district in which they are
13 located.

14 b. Applications seeking amended approval for a converted
15 development shall include documentation that all of the following
16 site improvement and infrastructure requirements have been met:

17 (1) the site meets the Residential Site Improvement Standards
18 parking requirement for the residential land uses in a converted
19 development as established pursuant to N.J.A.C.5:21-4.14-4.16;

20 (2) the recreation improvements and other amenities to be
21 constructed on the site have been revised, as needed, to meet the
22 needs of a converted development;

23 (3) the water supply system is adequate, as determined pursuant
24 to N.J.A.C.5:21-5.1, to meet the needs of a converted development;

25 (4) the capacity of the sanitary sewer system is adequate to meet
26 the projected flow requirements of a converted development
27 pursuant to N.J.A.C.7:14A-23.3.

28 (5) if additional water supply or sewer capacity is needed and
29 the developer is unable to obtain additional supply or capacity, the
30 number of dwelling units in the development has been reduced
31 accordingly;

32 (6) if additional parking is needed, and the developer is unable
33 to provide the required parking, the number of dwelling units in the
34 development has been reduced accordingly; and

35 (7) if additional parking is provided and increases the amount of
36 impervious cover by more than one percent, the storm water system
37 calculations and improvements have been revised accordingly.

38

39 5. A unit in a converted development shall conform to all
40 requirements imposed pursuant to the “State Uniform Construction
41 Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.). It shall also
42 conform to any requirements for, and limitations on, size and square
43 footage imposed pursuant to a preliminary approval. However, any
44 floor plans of the dwelling units may be revised without requiring
45 any further approving board approval or review.

46

47 6. a. In the case of an age-restricted development which is
48 being changed to a ¹[non-restricted] converted¹ development, the

1 layout of a subdivision or site plan approved pursuant to the
2 “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.)
3 shall not be revised other than to accommodate additional parking,
4 different recreation improvements and other amenities,
5 infrastructure enhancements, a needed reduction in the number of
6 units, or a needed change to construct the affordable units as
7 attached housing.

8 b. In order to construct the affordable units as attached
9 housing, to meet accessibility requirements, or provide them as
10 rental units, the affordable units may be constructed in one section
11 of the development with a separate management entity if such a
12 management entity is required due to the nature of the development.

13 c. The size, height, footprint, number of bedrooms and square
14 footage of buildings established as part of a preliminary or final
15 approval for an age-restricted development shall not be increased,
16 but may be decreased for a converted development, except that the
17 number of bedrooms for the affordable units only may be increased
18 within the footprint to meet the bedroom distribution requirements
19 as established in the Uniform Housing Affordability Controls.

20

21 7. a. Within 30 days after the submission of an amended
22 application pursuant to this bill, the approving board shall advise
23 the applicant in writing whether the amended application is
24 complete, with completeness to be determined based upon whether
25 the applicant has submitted documentation addressing the issues
26 described in section 4 of P.L. , c. (C.) (pending before the
27 Legislature as this bill). If no such writing asserting incompleteness
28 for any such reason is provided to the applicant within the 30 day
29 period, the application shall be deemed complete for purposes of
30 review by the approving board.

31 b. The approving board shall render a decision on an
32 application for a converted development within 60 days of a
33 determination of application completeness, unless the time frame is
34 extended by the applicant. If no such decision is rendered by the
35 approving board within the time period, including extensions, the
36 application shall be deemed approved and the applicant shall in
37 such a case follow the procedures set forth in section 5 of P.L.1985,
38 c.516 (C.40:55D-10.4).

39 c. Applicants seeking approval for a converted development
40 pursuant to P.L. , c. (C.) (pending before the Legislature as
41 this bill) shall not be charged application fees, although reasonable
42 escrow fees may be charged pursuant to section 13 of P.L.1991,
43 c.256 (C.40:55D-53.2).

44

45 8. After a development has been officially changed to a non-
46 restricted development, the developer shall file a copy of the
47 revised preliminary subdivision or site plan approval with the
48 municipal engineer for review and a determination that all site

1 information is complete. Such information shall be used as the base
2 document for the calculation of any required inspection escrow
3 accounts, and performance and maintenance guaranties in
4 accordance with section 41 of P.L.1975, c.291 (C.40:55D-53). Any
5 reasonable costs for the review of the revised plans may be charged
6 to the escrow account that the developer posted with the
7 municipality.

8
9 9. An application for approval to change a development from
10 age-restricted to non-restricted status, pursuant to section 4 of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 may be submitted to the approving board at anytime before the first
13 day of the 25th month next following the effective date of P.L. ,
14 c. (C.) (pending before the Legislature as this bill); provided,
15 however, that the approving board may extend this time period by
16 an additional 24 months if it finds, at the end of the initial period,
17 that poor economic conditions continue to adversely affect the real
18 estate market in New Jersey.

19
20 10. All development approvals for a development that changes
21 from age-restricted to non-restricted status pursuant to P.L. ,
22 c. (C.) (pending before the Legislature as this bill) shall be
23 deemed vested in accordance with the "Municipal Land Use Law,"
24 P.L.1975, c.291 (C.40:55D-1 et seq.), and extended as permitted
25 under the "Permit Extension Act of 2008," P.L.2008, c.78
26 (C.40:55D-136.1 et seq.). ¹In the case of a prior approval that was
27 not extended as permitted under the "Permit Extension Act of
28 2008," the period of vesting and protection shall not be less than 24
29 months from the date of approval of the application to change to a
30 non-restricted status.¹

31
32 ¹[11. a. An approving board shall issue a resolution of denial
33 within the time period set forth in subsection g. of section 6 of
34 P.L.1975, c.291 (C.40:55D-10). In the event that an approving
35 board denies an application for a converted development, an
36 applicant may appeal that determination to the Smart Growth
37 Ombudsman appointed pursuant to section 2 of P.L.2004, c.89
38 (C.52:27D-10.3). Such an appeal shall be filed within 30 days of
39 the applicant's receipt of the resolution of denial issued by the
40 approving board. The Smart Growth Ombudsman shall render a
41 decision as to an appeal within 60 days of its submission to the
42 Smart Growth Ombudsman. The notice of appeal shall include the
43 plans and reports, if any, submitted by the applicant to the
44 approving board in support of the request for approval of a
45 converted development. No fees will be charged for the filing or
46 processing of such an appeal.

47 b. In considering such an appeal, the Smart Growth
48 Ombudsman shall be guided by a review of whether the applicant

1 has demonstrated satisfaction of the review criteria set forth in
2 section 4 of P.L. , c. (C.) (pending before the Legislature
3 as this bill). Upon finding that the criteria have been satisfied, the
4 Smart Growth Ombudsman shall issue approval of the converted
5 development, along with any reasonable approval conditions
6 deemed necessary by the Smart Growth Ombudsman. There shall
7 be no right of appeal from decisions issued by the Smart Growth
8 Ombudsman.】¹

9
10 ¹11. An approving board shall issue a resolution memorializing
11 its decision on an application for a converted development within
12 the time period set forth in subsection g. of section 6 of P.L.1975,
13 c.291 (C.40:55D-10). In the event that an approving board denies
14 an application for a converted development or approves an
15 application subject to conditions deemed unsatisfactory to the
16 applicant, the applicant may appeal that determination to the court
17 in a summary manner. Such an appeal shall be filed within 30 days
18 of the applicant's receipt of the resolution of denial issued by the
19 approving board. The notice of appeal shall include the plans and
20 reports, if any, submitted by the applicant to the approving board in
21 support of the request for approval of a converted development, a
22 copy of the transcript of the hearing before the approving board,
23 and any other items that comprise the record before the approving
24 board.¹

25
26 ¹12. Notwithstanding any law, rule or regulation to the contrary,
27 a municipality that has received substantive certification from the
28 council shall be permitted to give preference for occupancy for up
29 to 50 percent of all available affordable housing units in a converted
30 development to those households having members who work or
31 reside in the municipality.¹

32
33 ¹13. Under any rental or purchase program implemented to
34 prevent the homelessness of persons who have experienced or may
35 experience the foreclosure and loss of their personal residence, or
36 any program which addresses the needs of low and moderate
37 income households residing within the municipality including, but
38 not limited to, State, federal or local programs, if the persons
39 benefitting from the program are otherwise income qualified to
40 occupy such housing under federal or State law, then affirmative
41 marketing requirements under regulations promulgated to effectuate
42 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) shall
43 be waived to permit such persons to occupy, rent or purchase the
44 housing units which they may have previously occupied or owned.¹

45
46 ¹14. For the purpose of determining credits to be granted against
47 the fair share obligation of a municipality under the requirements of

1 P.L.1985, c.222 (C.52:27D-301 et al.) and the regulations
2 promulgated to effectuate that act, a housing unit financed in whole
3 or in part through the allocation of federal Low-Income Housing
4 Tax Credits shall be eligible to be credited if the requirements of
5 federal law pursuant to 26 U.S.C. s.42 have been met for that unit.
6 In the event the federal requirements have been met, the provisions
7 of the Uniform Housing Affordability Controls promulgated by the
8 New Jersey Housing and Mortgage Finance Agency shall not be
9 applied to inhibit or prevent the crediting of the housing unit against
10 the municipal fair share obligation.¹

11

12 ¹[12.] 15.¹ This act shall take effect immediately.