

[Third Reprint]

SENATE, No. 2577

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 23, 2009

Sponsored by:

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District 19 (Middlesex)

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District 30 (Burlington, Mercer, Monmouth and Ocean)

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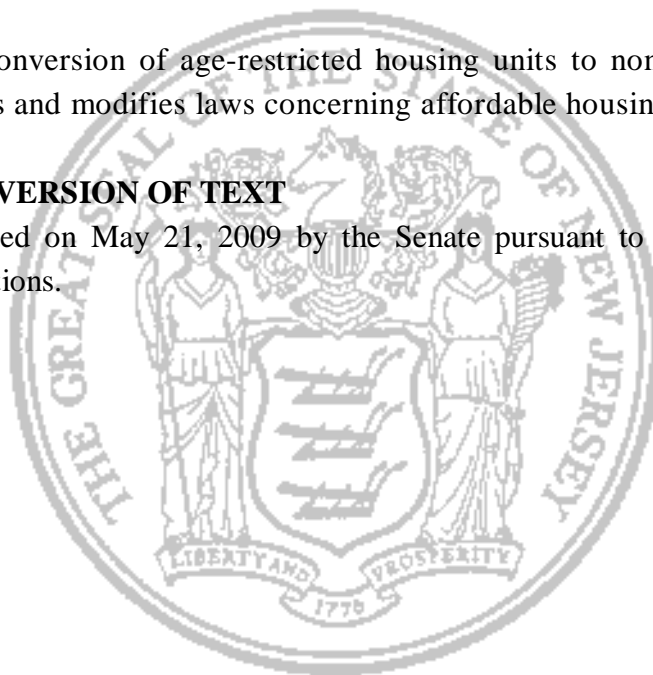
District 5 (Camden and Gloucester)

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 amended on May 21, 2009 by the Senate pursuant to the Governor's recommendations.



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

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

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

9
 10 1. The Legislature finds and declares that:

11 a. While the cost of housing in New Jersey has declined under
 12 currently eroding economic conditions, the cost of both renting and
 13 homeownership remains unaffordable to a large percentage of New
 14 Jersey residents, including those who make vital contributions to
 15 their communities such as teachers, nurses, police officers,
 16 firefighters, and the general workforce population;

17 b. In recognition of this crisis, Governor Jon S. Corzine has
 18 committed to producing and preserving 100,000 units of affordable
 19 housing for low-, moderate- and middle-income families and
 20 individuals over the next 10 years;

21 c. According to the 2000 U.S. Census, 55 percent of these
 22 families are one and two person households, many of which are
 23 unable to find homes and apartments designed to meet their needs;

24 d. While no policy is singularly responsible for current housing
 25 conditions, zoning practices have resulted in a lack of land
 26 approved for housing which meets the needs of households
 27 requiring smaller housing units;

28 e. The shortage of affordably priced workforce housing has
 29 been exacerbated in recent years by a municipal preference for age-
 30 restricted housing which has resulted in an oversupply of age-
 31 restricted housing approvals and an inability among the majority of
 32 New Jersey's workforce to live near their jobs;

33 f. While the Legislature has created a State Housing
 34 Commission, which has been charged with reviewing New Jersey's
 35 housing limitations and its future needs to create a balanced housing
 36 policy and plan appropriate for all New Jerseyans, it has not yet
 37 commenced operation;

38 g. Although the maximum municipal percentage of affordable
 39 fair share housing which may be met by age-restricted units in a
 40 municipality has been reduced from 50 percent to 25 percent under
 41 the recently adopted rules of the Council on Affordable Housing, a
 42 mechanism is needed to permit **'[a proposed] an'** age-restricted

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.

²Assembly floor amendments adopted March 16, 2009.

³Senate amendments adopted in accordance with Governor's recommendations May 21, 2009.

1 development to change to a **‘[non-restricted] converted¹**
2 development to meet this rule, and to meet demographic needs; and

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

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

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

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

19 “Age-restricted development” means a community that complies
20 with the “housing for older persons” exception from the federal
21 “Fair Housing Amendments Act of 1988,” Pub.L.100-430 (42
22 U.S.C. ss.3601 et seq.) for that community as set forth in section
23 100.301 of Title 24, Code of Federal Regulations.

24 "Attached housing" means housing units that share a common
25 wall.

26 “Converted development” means a proposed age-restricted
27 development that will be marketed instead with no age restrictions.

28 “Department” means the Department of Community Affairs.

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

34 ²“Floor area ratio” means the floor area of all buildings and
35 structures on a lot divided by the lot area.²

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

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

45 “Municipality” means any city, borough, town, township, or
46 village.

1 “Non-restricted **‘[development]’** status¹ means ‘the status of¹
2 an age-restricted development that has **‘[been changed to an open**
3 **market development where the age restriction has been eliminated]**
4 received approval to become a converted development¹.

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

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

10
11 3. a. During the period of time set forth in section 9 of
12 P.L. , c. (C.) (pending before the Legislature as this bill),
13 any age-restricted development shall be eligible to be changed to a
14 **‘[non-restricted] converted**¹ development, pending approving
15 board approval, provided that the development meets all of the
16 following conditions:

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

20 (2) the developer of the age-restricted **‘[community]**
21 **development**¹ is not holding a deposit for **‘[the sale of] , or has not**
22 **conveyed,**¹ any dwelling unit within the development;

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

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

37 c. No affordable housing units complying with applicable
38 Council on Affordable Housing standards or market-rate housing
39 units associated with such a converted development shall be
40 construed as generating any **2[growth] fair**² share affordable
41 housing obligation for a municipality.

42
43 4. a. A developer seeking to change an age-restricted
44 development approval to a converted development approval shall
45 file an application with the approving board seeking an amendment
46 to the previously granted approvals requesting the authority to

1 develop the land as a converted development. At such time, the
2 developer shall also file a copy of said notice with the municipal
3 clerk of the municipality in which the development is located and
4 the developer shall provide notice prior to a hearing on the
5 application in the manner prescribed by section 7.1 of P.L.1975,
6 c.291 (C.40:55D-12).

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

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

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

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

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

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

34 (5) if additional water supply or sewer capacity is needed and
35 the developer is unable to obtain additional supply or capacity, the
36 number of dwelling units in the development has been reduced
37 accordingly;

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

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

44 ³c. if the approving board determines that the requirement of
45 P.L. , c. (C.) (pending before the Legislature as this bill) have
46 been satisfied, and the conversion can be granted without
47 substantial detriment to the public good and will not substantially

1 impair the intent and purpose of the zone plan and zoning
2 ordinance, the application for the conversion shall be approved.³

3
4 5. A unit in a converted development shall conform to all
5 requirements imposed pursuant to the “State Uniform Construction
6 Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.). It shall also
7 conform to any requirements for, and limitations on, size and square
8 footage imposed pursuant to a preliminary approval. However, any
9 floor plans of the dwelling units may be revised without requiring
10 any further approving board approval or review.

11
12 6. a. In the case of an age-restricted development which is
13 being changed to a ¹**‘[non-restricted] converted’** development, the
14 layout of a subdivision or site plan approved pursuant to the
15 “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.)
16 ²**‘[shall not] may’** be ²reasonably² revised ²**‘[other than]’**²
17 accommodate additional parking, different recreation improvements
18 and other amenities, infrastructure enhancements, a needed
19 reduction in the number of units, ²height requirements, revision to
20 dwelling footprints that do not modify square footage of the
21 development or the individual dwellings,² or a needed change to
22 construct the affordable units as attached housing.

23 b. In order to construct the affordable units as attached
24 housing, to meet accessibility requirements, or provide them as
25 rental units, the affordable units may be constructed in one section
26 of the development with a separate management entity if such a
27 management entity is required due to the nature of the development.

28 c. The size, height, ²**‘[footprint] floor area ratio’**², number of
29 bedrooms and ²total² square footage of buildings established as part
30 of a preliminary or final approval for an age-restricted development
31 shall not be increased, but may be decreased for a converted
32 development, except that the number of bedrooms for the affordable
33 units only may be increased within the footprint to meet the
34 bedroom distribution requirements as established in the Uniform
35 Housing Affordability Controls.

36
37 7. a. Within 30 days after the submission of an amended
38 application pursuant to this bill, the approving board shall advise
39 the applicant in writing whether the amended application is
40 complete, with completeness to be determined based upon whether
41 the applicant has submitted documentation addressing the issues
42 described in section 4 of P.L. , c. (C.) (pending before the
43 Legislature as this bill). If no such writing asserting incompleteness
44 for any such reason is provided to the applicant within the 30 day
45 period, the application shall be deemed complete for purposes of
46 review by the approving board.

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

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

14
15 8. After a development has been officially changed to a non-
16 restricted development, the developer shall file a copy of the
17 revised preliminary subdivision or site plan approval with the
18 municipal engineer for review and a determination that all site
19 information is complete. Such information shall be used as the base
20 document for the calculation of any required inspection escrow
21 accounts, and performance and maintenance guaranties in
22 accordance with section 41 of P.L.1975, c.291 (C.40:55D-53). Any
23 reasonable costs for the review of the revised plans may be charged
24 to the escrow account that the developer posted with the
25 municipality.

26
27 9. An application for approval to change a development from
28 age-restricted to non-restricted status, pursuant to section 4 of
29 P.L. , c. (C.) (pending before the Legislature as this bill),
30 may be submitted to the approving board at anytime before the first
31 day of the 25th month next following the effective date of P.L. ,
32 c. (C.) (pending before the Legislature as this bill); provided,
33 however, that the approving board may extend this time period by
34 an additional 24 months if it finds, at the end of the initial period,
35 that poor economic conditions continue to adversely affect the real
36 estate market in New Jersey.

37
38 10. All development approvals for a development that changes
39 from age-restricted to non-restricted status pursuant to P.L. ,
40 c. (C.) (pending before the Legislature as this bill) shall be
41 deemed vested in accordance with the "Municipal Land Use Law,"
42 P.L.1975, c.291 (C.40:55D-1 et seq.), and extended as permitted
43 under the "Permit Extension Act of 2008," P.L.2008, c.78
44 (C.40:55D-136.1 et seq.). 'In the case of a prior approval that was
45 not extended as permitted under the "Permit Extension Act of
46 2008," the period of vesting and protection shall not be less than 24
47 months from the date of approval of the application to change to a
48 non-restricted status.'¹

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

16 b. In considering such an appeal, the Smart Growth
17 Ombudsman shall be guided by a review of whether the applicant
18 has demonstrated satisfaction of the review criteria set forth in
19 section 4 of P.L. , c. (C.) (pending before the Legislature
20 as this bill). Upon finding that the criteria have been satisfied, the
21 Smart Growth Ombudsman shall issue approval of the converted
22 development, along with any reasonable approval conditions
23 deemed necessary by the Smart Growth Ombudsman. There shall
24 be no right of appeal from decisions issued by the Smart Growth
25 Ombudsman.]¹

26
27 ¹11. ²a.² An approving board shall issue a resolution
28 memorializing its decision on an application for a converted
29 development within the time period set forth in subsection g. of
30 section 6 of P.L.1975, c.291 (C.40:55D-10). In the event that an
31 approving board denies an application for a converted development
32 or approves an application subject to conditions deemed
33 unsatisfactory to the applicant, the applicant may appeal that
34 determination to the court in a summary manner. Such an appeal
35 shall be filed within 30 days of the applicant's receipt of the
36 resolution ²[of denial]² issued by the approving board. The notice
37 of appeal shall include the plans and reports, if any, submitted by
38 the applicant to the approving board in support of the request for
39 approval of a converted development, a copy of the transcript of the
40 hearing before the approving board, and any other items that
41 comprise the record before the approving board.¹

42 ²b. In deciding an appeal, the court shall consider ³[whether the
43 applicant complied with the criteria contained in section 3 and
44 section 4 of P.L. , c. (C.) (pending before the Legislature as
45 this bill). Upon finding that the criteria have been satisfied,] the
46 reasonableness of the decision of the approving board. Upon
47 finding that the conversion should have been approved³ the court

1 may make an order instructing the board to approve the converted
2 development, along with any reasonable conditions of approval
3 deemed necessary by the court.²
4

5 ¹12. Notwithstanding any law, rule or regulation to the contrary,
6 a municipality that has received substantive certification from the
7 council shall be permitted to give preference for occupancy for up
8 to 50 percent of all available affordable housing units in a converted
9 development to those households having members who work or
10 reside in the municipality.¹
11

12 ¹13. Under any rental or purchase program implemented to
13 prevent the homelessness of persons who have experienced or may
14 experience the foreclosure and loss of their personal residence, or
15 any program which addresses the needs of low and moderate
16 income households residing within the municipality including, but
17 not limited to, State, federal or local programs, if the persons
18 benefitting from the program are otherwise income qualified to
19 occupy such housing under federal or State law, then affirmative
20 marketing requirements under regulations promulgated to effectuate
21 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) shall
22 be waived to permit such persons to occupy, rent or purchase the
23 housing units which they may have previously occupied or owned.¹
24

25 ¹14. For the purpose of determining credits to be granted against
26 the fair share obligation of a municipality under the requirements of
27 P.L.1985, c.222 (C.52:27D-301 et al.) and the regulations
28 promulgated to effectuate that act, a housing unit financed in whole
29 or in part through the allocation of federal Low-Income Housing
30 Tax Credits shall be eligible to be credited if the requirements of
31 federal law pursuant to 26 U.S.C. s.42 have been met for that unit.
32 In the event the federal requirements have been met, the provisions
33 of the Uniform Housing Affordability Controls promulgated by the
34 New Jersey Housing and Mortgage Finance Agency shall not be
35 applied to inhibit or prevent the crediting of the housing unit against
36 the municipal fair share obligation.¹
37

38 ¹[12.] 15.¹ This act shall take effect immediately.