

[First Reprint]

SENATE, No. 2884

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JANUARY 9, 2017

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman TIM EUSTACE

District 38 (Bergen and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblywoman MARLENE CARIDE

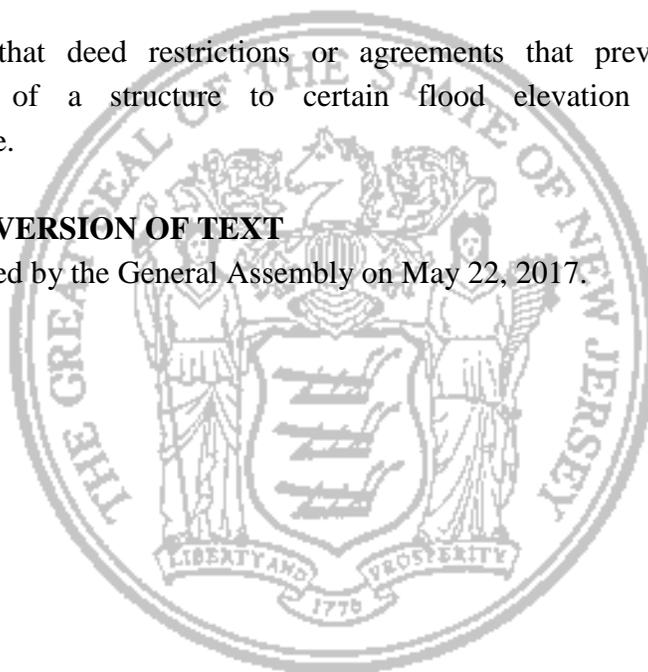
District 36 (Bergen and Passaic)

SYNOPSIS

Declares that deed restrictions or agreements that prevent raising or constructing of a structure to certain flood elevation standards are unenforceable.

CURRENT VERSION OF TEXT

As amended by the General Assembly on May 22, 2017.



(Sponsorship Updated As Of: 6/9/2017)

1 AN ACT concerning certain flood elevation standards and deed
2 restrictions or agreements, and amending P.L.2013, c.107.

3

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

6

7 1. Section 1 of P.L.2013, c.107 (C.58:16A-103) is amended to
8 read as follows:

9 1. a. As used in this section:

10 "Existing structure" means any structure that existed on October
11 28, 2012.

12 "Highest applicable flood elevation standard" means the new
13 FEMA base flood elevation plus an additional three feet, or any
14 applicable flood elevation standard required pursuant to N.J.A.C.
15 7:13-1.1 et seq. and adopted by the Department of Environmental
16 Protection pursuant to the "Flood Hazard Area Control Act,"
17 P.L.1962, c.19 (C.58:16A-50 et seq.), whichever is higher.

18 "New and appropriate elevation" means any elevation to which a
19 structure is raised, or is to be raised, that is equal to or higher than
20 the applicable new FEMA base flood elevation, provided, however,
21 in no case shall the new and appropriate elevation exceed the
22 highest applicable flood elevation standard.

23 "New FEMA base flood elevation" means any base flood
24 elevation proposed or adopted after October 28, 2012, by the
25 Federal Emergency Management Agency.

26 "Original dimensions" means the exact vertical and horizontal
27 dimensions of a structure as it existed on October 28, 2012.

28 "Sandy-damaged structure" means any structure that existed on
29 October 28, 2012 and was damaged or destroyed by Hurricane
30 Sandy.

31 "Structure" means any dwelling or building; however, in the case
32 of attached townhouses or row houses for which title to each
33 ¹[unit] townhouse or row house building, including the roof and
34 other structural elements,¹ is held in fee simple, "structure" means
35 a single townhouse or single row house. ¹"Structure" shall not
36 include a unit which is part of a condominium as defined in
37 P.L.1969, c.257 (C.46:8B-1 et seq.).¹

38 b. (1) Notwithstanding the provisions of any other law to the
39 contrary, except as otherwise provided pursuant to paragraph (2) of
40 this subsection, a person shall be exempt from any development
41 regulation, including any requirement to apply for a variance
42 therefrom, that otherwise would be violated as a result of raising an
43 existing structure to a new and appropriate elevation, or
44 constructing a staircase or other attendant structure necessitated by

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:

¹Assembly floor amendments adopted May 22, 2017.

1 such raising, provided, however, this exemption shall apply only to
2 the minimum extent or degree necessary to allow the structure to
3 meet the new and appropriate elevation with adequate means of
4 ingress and egress.

5 (2) The exemption established pursuant to paragraph (1) of this
6 subsection shall not be available to a person who has altered the
7 original dimensions of a structure if, had the alteration not been
8 made, the structure could have been raised to meet the new and
9 appropriate elevation either without the exemption or with an
10 exemption of lesser degree than is needed with the alteration.

11 c. (1) Notwithstanding the provisions of any other law to the
12 contrary, except as otherwise provided pursuant to paragraph (2) of
13 this subsection, a person shall be exempt from any development
14 regulation, including any requirement to apply for a variance
15 therefrom, that otherwise would be violated as a result of using a
16 new and appropriate elevation when lawfully repairing or
17 reconstructing a Sandy-damaged structure, or constructing a
18 staircase or other attendant structure necessitated by use of the new
19 and appropriate elevation, provided, however, this exemption shall
20 apply only to the minimum extent or degree necessary to allow the
21 Sandy-damaged structure to meet the new and appropriate elevation
22 with adequate means of ingress and egress.

23 (2) The exemption established pursuant to paragraph (1) of this
24 subsection shall not be available to a person whose repair or
25 reconstruction plan would alter the original dimensions of a
26 structure when, if not for the alteration, the structure could
27 otherwise be raised to meet the new and appropriate elevation either
28 without the exemption or with an exemption of lesser degree than is
29 needed with the alteration.

30 d. Notwithstanding the provisions of any other law to the
31 contrary, any deed restriction or agreement, no matter when entered
32 into or made, that prohibits or has the effect of prohibiting any
33 otherwise lawful raising or constructing of a structure to a new and
34 appropriate elevation is contrary to public policy and therefore shall
35 be unenforceable¹, except that all other covenants, easements, and
36 restrictions of a common interest community shall remain in force,
37 and costs associated with the construction, repair, or other related
38 improvements to neighboring properties and common elements
39 shall be borne solely by the owner of the structure which will be
40 raised or constructed to a new elevation¹.

41 (cf: P.L.2013, c.107, s.1)

42

43 2. This act shall take effect immediately.