

ASSEMBLY, No. 898

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Establishes municipal authority to supervise, discipline and terminate employment of construction code officials.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning municipal authority over certain employees and
2 amending P.L.1975, c.217.

3

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

6

7 1. Section 6 of P.L.1975, c.217 (C.52:27D-124) is amended to
8 read as follows:

9 6. The commissioner shall have all the powers necessary or
10 convenient to effectuate the purposes of this act, including, but not
11 limited to, the following powers in addition to all others granted by
12 this act:

13 a. To adopt, amend and repeal, after consultation with the code
14 advisory board, rules: (1) relating to the administration and
15 enforcement of this act and (2) the qualifications or licensing, or
16 both, of all persons employed by enforcing agencies of the State to
17 enforce this act or the code, except that, plumbing inspectors shall
18 be subject to the rules adopted by the commissioner only insofar as
19 such rules are compatible with such rules and regulations, regarding
20 health and plumbing for public and private buildings, as may be
21 promulgated by the Public Health Council in accordance with Title
22 26 of the Revised Statutes.

23 b. To enter into agreements with federal and State of New
24 Jersey agencies, after consultation with the code advisory board, to
25 provide insofar as practicable (1) single-agency review of
26 construction plans and inspection of construction and (2)
27 intergovernmental acceptance of such review and inspection to
28 avoid unnecessary duplication of effort and fees. The commissioner
29 shall have the power to enter into such agreements although the
30 federal standards are not identical with State standards; provided
31 that the same basic objectives are met. The commissioner shall
32 have the power through such agreements to bind the State of New
33 Jersey and all governmental entities deriving authority therefrom.

34 c. To take testimony and hold hearings relating to any aspect of
35 or matter relating to the administration or enforcement of this act,
36 including but not limited to prospective interpretation of the code so
37 as to resolve inconsistent or conflicting code interpretations, and, in
38 connection therewith, issue subpoena to compel the attendance of
39 witnesses and the production of evidence. The commissioner may
40 designate one or more hearing examiners to hold public hearings
41 and report on such hearings to the commissioner.

42 d. To encourage, support or conduct, after consultation with the
43 code advisory board, educational and training programs for
44 employees, agents and inspectors of enforcing agencies, either

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.

1 through the Department of Community Affairs or in cooperation
2 with other departments of State government, enforcing agencies,
3 educational institutions, or associations of code officials.

4 e. To study the effect of this act and the code to ascertain their
5 effect upon the cost of building construction and maintenance, and
6 the effectiveness of their provisions for insuring the health, safety,
7 and welfare of the people of the State of New Jersey.

8 f. To make, establish and amend, after consultation with the
9 code advisory board, such rules as may be necessary, desirable or
10 proper to carry out his powers and duties under this act.

11 g. To adopt, amend, and repeal rules and regulations providing
12 for the charging of and setting the amount of fees for the following
13 code enforcement services, licenses or approvals performed or
14 issued by the department, pursuant to the "State Uniform
15 Construction Code Act:"

16 (1) Plan review, construction permits, certificates of occupancy,
17 demolition permits, moving of building permits, elevator permits
18 and sign permits; and

19 (2) Review of applications for and the issuance of licenses
20 certifying an individual's qualifications to act as a construction code
21 official, subcode official or assistant under this act.

22 (3) (Deleted by amendment, P.L.1983, c.338).

23 h. To adopt, amend and repeal rules and regulations providing
24 for the charging of and setting the amount of construction permit
25 surcharge fees to be collected by the enforcing agency and remitted
26 to the department to support those activities which may be
27 undertaken with moneys credited to the Uniform Construction Code
28 Revolving Fund.

29 i. To adopt, amend and repeal rules and regulations providing
30 for:

31 (1) Setting the amount of and the charging of fees to be paid to
32 the department by a private agency for the review of applications
33 for and the issuance of approvals authorizing a private agency to act
34 as an on-site inspection and plan review agency or an in-plant
35 inspection agency;

36 (2) The setting of the amounts of fees to be charged by a private
37 agency for inspection and plan review services; provided, however,
38 that such fees shall not be more than those adopted and charged by
39 the department when it serves as a local enforcement agency
40 pursuant to section 10 of P.L.1975, c.217 (C.52:27D-128); and

41 (3) The formulation of standards to be observed by a
42 municipality in the evaluation of a proposal submitted by a private
43 agency to provide inspection or plan review services within a
44 municipality.

45 j. To enforce and administer the provisions of the "State
46 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
47 et seq.) and the code promulgated thereunder, and to prosecute or
48 cause to be prosecuted violators of the provisions of that act or the

1 code promulgated thereunder in administrative hearings and in civil
2 proceedings in State and local courts.

3 k. To monitor the compliance of local enforcing agencies with
4 the provisions of the "State Uniform Construction Code Act,"
5 P.L.1975, c.217 (C.52:27D-119 et seq.), to order corrective action
6 as may be necessary where a local enforcing agency is found to be
7 failing to carry out its responsibilities under that act, to supplant or
8 replace the local enforcing agency for a specific project, and to
9 order it dissolved and replaced by the department where the local
10 enforcing agency repeatedly or habitually fails to enforce the
11 provisions of the "State Uniform Construction Code Act."
12 Notwithstanding the provisions of this section, or any law or
13 regulation to the contrary, the appointing authority of a municipality
14 shall have the power to supervise individual code enforcement
15 officials, and to take disciplinary action as may be necessary when a
16 code enforcement official is failing to carry out his duties as an
17 employee of the municipality, when his conduct violates any
18 applicable municipal ordinance, including but not limited to an
19 ordinance establishing conflict of interest rules for code
20 enforcement officials, or when the code enforcement official
21 exhibits general misconduct. The municipality shall have the power
22 to terminate the employment of any code enforcement official
23 appointed pursuant to section 8 of P.L.1975, c.217 (C.52:27D-126),
24 subject to the right of the code enforcement official to a hearing as
25 may be granted by law.

26 l. To adopt, amend and repeal rules and regulations
27 implementing the provisions of P.L.1999, c.15 and P.L.2003,
28 c.44 concerning the installation and maintenance of carbon
29 monoxide sensors.
30 (cf: P.L.2003, c.44, s.2)

31

32 2. Section 8 of P.L.1975, c.217 (C.52:27D-126) is amended to
33 read as follows:

34 8. a. (1) The appointing authority of any municipality shall
35 appoint a construction official and any necessary subcode officials
36 to administer and enforce the code. The appointing authority may,
37 by resolution or order as appropriate, set the total number of weekly
38 hours of operation of the construction official's office and the total
39 number of weekly work hours of the construction official,
40 commensurate with the compensation paid to the construction
41 official. The appointing authority shall not set the specific work
42 hours of the construction official. The appointing authority shall
43 also appoint a construction board of appeals to hear and decide
44 appeals from decisions made by said construction official and
45 subcode officials, in the administration and enforcement of the
46 code. Nothing herein, however, shall prevent a municipality from
47 accepting inspections as to compliance with the code or any
48 subcode thereof made by an inspection authority approved by the

1 State of New Jersey pursuant to law.

2 (2) Notwithstanding the provisions of this section, or any law or
3 regulation to the contrary, the appointing authority of a municipality
4 shall have the power to supervise any code enforcement official
5 appointed pursuant to paragraph (1) of this subsection, and to take
6 disciplinary action as may be necessary when a code enforcement
7 official is failing to carry out his duties as an employee of the
8 municipality, when his conduct violates any applicable municipal
9 ordinance, including but not limited to an ordinance establishing
10 conflict of interest rules for code enforcement officials, or when the
11 code enforcement official otherwise exhibits general misconduct in
12 the performance of his duties. The municipal authority shall have
13 the power to terminate the employment of any code enforcement
14 official appointed pursuant to paragraph (1) of this subsection,
15 provided that the requirements of paragraph (3) of this subsection
16 are met, and subject to the right of the code enforcement official to
17 a hearing as may be granted in this section or by any other law.

18 (3) The appointing authority of a municipality shall, by
19 ordinance, establish written criteria for what constitutes misconduct
20 by a code enforcement official in the performance of his duties,
21 including but not limited to neglect of duty, conflict of interests
22 violations, unsatisfactory performance, incapacity, inefficiency, or
23 any other disqualifying cause. The ordinance establishing the
24 criteria shall also indicate the disciplinary measure that the
25 appointing authority will take in response to each finding of
26 misconduct, including when misconduct would lead to employment
27 termination. The appointing authority shall provide this
28 information, in writing, to all code enforcement officials appointed
29 pursuant to paragraph (1) of this subsection.

30 b. To establish tenure rights or any other right or protection
31 provided by the "State Uniform Construction Code Act" or Title
32 11A, Civil Service, of the New Jersey Statutes, or any pension law
33 or retirement system, the job title "construction official" shall be
34 equivalent to that job title which, prior to the adoption of the State
35 Uniform Construction Code as provided in section 5 of the "State
36 Uniform Construction Code Act," entailed the chief administrative
37 responsibility to enforce all construction codes which had been
38 adopted by the municipal governing body, the enforcement of
39 which was not the responsibility of an authorized private inspection
40 agency; and the job title "subcode official" shall be equivalent to
41 that job title which, prior to the adoption of the State Uniform
42 Construction Code, entailed subordinate administrative
43 responsibility to enforce one or more of the following construction
44 codes: building, plumbing, electrical or fire code.

45 Any person, in a municipality operating under Title 11A, Civil
46 Service, of the New Jersey Statutes, who, prior to the adoption of
47 the State Uniform Construction Code, held the equivalent of the job
48 title "construction" official or "subcode" official, but who no longer

1 holds his position as a result of a determination that his old job title
2 was not equivalent to that of "construction" official or "subcode"
3 official, shall be offered reappointment as a construction official or
4 subcode official, as the case may be, and shall be granted permanent
5 classified status in such position. Tenure shall continue for (1) any
6 construction official or subcode official who is serving under tenure
7 as otherwise provided by law on the effective date of this act or
8 within one year thereafter, or (2) any person certified pursuant to
9 subsection c. of this section and who subsequently gains such
10 tenure.

11 A construction official or subcode official appointed in a
12 municipality operating under the provisions of Title 11A, Civil
13 Service, of the New Jersey Statutes, who, at the time of adoption of
14 the State Uniform Construction Code, January 1, 1977, or prior to
15 January 1, 1981, had permanent classified status or was employed
16 as a construction official or subcode official or in another position
17 in the unclassified service, shall be included in the classified service
18 without civil service examination in his respective title of
19 construction official or subcode official. Any individual employed
20 by a municipality, who, in his employment with the municipality
21 between January 1, 1977 and prior to January 1, 1981, was charged
22 with the chief administrative responsibility to enforce all existing
23 municipal construction codes, shall be deemed as appointed to the
24 position of construction official for the purposes of this act. Any
25 individual employed by a municipality, who, in his employment
26 with the municipality between January 1, 1977 and prior to January
27 1, 1981, was charged with chief responsibility to enforce the
28 municipal building, plumbing, fire, or electrical code, shall be
29 deemed as appointed to the position of subcode official for the
30 purposes of this act. No person, on or after January 1, 1981, shall
31 be appointed as construction or subcode official in a municipality
32 operating under Title 11A, Civil Service, of the New Jersey Statutes
33 without having passed an examination administered by the Merit
34 System Board certifying the merit and fitness of the person to hold
35 such position; provided that, whenever a noncivil service
36 municipality adopts the provisions of that Title, construction code
37 officials and subcode officials of such municipality appointed prior
38 to the filing of the petition for the adoption of civil service, shall
39 attain permanent status in the classified service without
40 examination. Any construction or subcode official appointed after
41 January 1, 1981 on a provisional basis in a municipality which has
42 adopted the provisions of Title 11A, Civil Service, of the New
43 Jersey Statutes, may not be removed from office except for just
44 cause after a fair and impartial hearing has been held at the local
45 level, with no further appeal to the Merit System Board; provided,
46 however, that such a construction or subcode official may be
47 removed to permit the appointment of a person certified for
48 appointment by the Merit System Board.

1 A construction official or subcode official in a noncivil service
2 municipality shall be appointed for a term of four years and shall,
3 upon appointment to a second consecutive term or on or after the
4 commencement of a fifth consecutive year of service, including
5 years of service in an equivalent job title held prior to the adoption
6 of the State Uniform Construction Code, be granted tenure and shall
7 not be removed from office except for just cause after a fair and
8 impartial hearing.

9 A construction or subcode official, to be eligible for appointment
10 in civil service or noncivil service municipalities, shall be certified
11 by the State of New Jersey in accordance with subsection c. of this
12 section and shall have had at least three years' experience in
13 construction, design or supervision as a licensed engineer or
14 registered architect; or five years' experience in construction,
15 design, or supervision as an architect or engineer with a bachelor's
16 degree from an accredited institution of higher education; or 10
17 years' experience in construction, design or supervision as a
18 journeyman in a trade or as a contractor. A subcode official shall,
19 pursuant to any subcode which he administers, pass upon:

20 (1) matters relative to the mode, manner of construction or
21 materials to be used in the erection or alteration of buildings or
22 structures, except as to any such matter foreclosed by State
23 approval pursuant to this act, and (2) actual execution of the
24 approved plans and the installation of the materials approved by the
25 State. The construction official in each municipality shall be the
26 chief administrator of the "enforcing agency." He shall have the
27 power to overrule a determination of a subcode official based on an
28 interpretation of a substantive provision of the subcode which such
29 subcode official administers, only if the construction official is
30 qualified to act pursuant to this act as a subcode official for such
31 subcode. He may serve as subcode official for any subcode which
32 he is qualified under this act to administer. A subcode official or
33 municipal engineer may serve as a construction official if otherwise
34 qualified under the provisions of this act. The municipal enforcing
35 agency shall require compliance with the provisions of the code, of
36 all rules lawfully adopted and promulgated thereunder and of laws
37 relating to the construction, alteration, repair, removal, demolition
38 and integral equipment and location, occupancy and maintenance of
39 buildings and structures, except as may be otherwise provided for.

40 Two or more municipalities may provide by ordinance, subject to
41 regulations established by the commissioner, for the joint
42 appointment of a construction official and subcode official for the
43 purpose of enforcing the provisions of the code in the same manner.

44 c. No person shall act as a construction official or subcode
45 official for any municipality unless the commissioner determines
46 that said person is so qualified, except for the following:

47 (1) a municipal construction official or subcode official holding
48 office under permanent civil service status, or tenure as otherwise

1 provided by law on the effective date of this act or within one year
2 thereafter and (2) a municipal construction official or subcode
3 official holding office without such permanent civil service status
4 or tenure on the effective date of this act or within one year
5 thereafter; provided said construction official or subcode official
6 not having such permanent civil service status or tenure shall be
7 certified in accordance with this act within four years of the
8 effective date thereof; provided further that a person holding on the
9 effective date of this act a valid plumbing inspector's license from
10 the Department of Health and Senior Services pursuant to Title 26
11 of the Revised Statutes may serve as a plumbing subcode official
12 and a person holding on the effective date of this act a valid
13 electrical inspector's license from the Board of Public Utilities
14 pursuant to Title 48 of the Revised Statutes may serve as an
15 electrical subcode official. The commissioner, after consultation
16 with the code advisory board, may authorize the preparation and
17 conducting of oral, written and practical examinations to determine
18 if a person is qualified by this act to be eligible to be a construction
19 official or subcode official or, in the alternative, may accept
20 successful completion of programs of training as proof of
21 qualification within the meaning of this act. Upon a determination
22 of qualification the commissioner shall issue or cause to be issued a
23 certificate to the construction official or subcode official or trainee
24 stating that he is so certified. The commissioner, after consultation
25 with the code advisory board, may establish classes of certification
26 that will recognize the varying complexities of code enforcement in
27 the municipalities within the State. The commissioner shall, after
28 consultation with the code advisory board, provide for educational
29 programs designed to train and assist construction officials and
30 subcode officials in carrying out their responsibilities.

31 Whenever the commissioner is required by the terms of this
32 subsection to consult with the code advisory board and the matter in
33 question concerns plumbing subcode officials, the commissioner
34 shall also consult with the Public Health Council and Commissioner
35 of Health and Senior Services.

36 d. The commissioner, after consultation with the code advisory
37 board, may periodically require that each construction official and
38 subcode official demonstrate a working knowledge of innovations
39 in construction technology and materials, recent changes in and
40 additions to the relevant portions of the State Uniform Construction
41 Code, and current standards of professional ethics and legal
42 responsibility; or, in the alternative, the commissioner, after
43 consultation with the code advisory board, may accept successful
44 completion of appropriate programs of training as proof of such
45 working knowledge.

46 (cf: P.L.2000, c.126, s.29)

47

48 3. This act shall take effect immediately.

1 STATEMENT

2
3 Under existing law, a municipality has the power to appoint a
4 construction official and any other necessary subcode officials
5 charged with enforcing the "State Uniform Construction Code,"
6 P.L.1975, c.217 (C.52:27D-119 et seq.). This bill amends existing
7 law to also empower the appointing authority in a municipality with
8 supervisory and disciplinary powers, including the authority to
9 terminate the employment of the construction code officials it
10 appoints.

11 While the Department of Community Affairs is in charge of
12 licensing and other employment eligibility requirements for the
13 construction official and the subcode officials, the municipality has
14 the authority to regulate the local construction code officials in
15 certain areas, such as the total number of weekly hours an employee
16 must work, and matters concerning conflict of interest in the
17 performance of duties. Given that the municipality is more likely to
18 ascertain whether or not an employee is performing his job in a
19 timely and proper manner, the municipality should have the power
20 to also supervise the employee, take the necessary disciplinary
21 action, and terminate employment, if appropriate.