ASSEMBLY, No. 3309

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman GREGORY P. MCGUCKIN
District 10 (Ocean)
Assemblyman JOHN CATALANO
District 10 (Ocean)

SYNOPSIS

Requires installation of emergency power supply systems to certain common areas of new planned real estate developments; provides related tax incentives.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the provision of emergency power supply systems to certain common areas of new planned real estate developments and supplementing various parts of the statutory law.

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

1. a. The Commissioner of Community Affairs shall revise the State Uniform Construction Code to require the installation of an emergency power supply system for each common recreation or community facility, commonly referred to as a clubhouse or community room, of a planned real estate development. The code revision shall set forth criteria to ensure that an emergency power supply system installed in accordance with this section provides a source of electrical power of required capacity, reliability, and quality to a common recreation or community facility so that the facility can serve as a shelter for residents of the development in case of extended power outages. The code revision shall cover installation, maintenance, operation, and testing requirements as they pertain to the performance of an emergency power supply system. The code revision shall be consistent with performance requirements for emergency and standby power systems specified in the National Fire Protection Association Standard 110 (NFPA-110), or successor code or standard adopted by reference in the electrical subcode of the State Uniform Construction Code, however, the commissioner, after consultation with the code advisory board, may include provisions in the code revision that clarify, modify, or deviate from NFPA-110 in order to further the purposes of this act.

b. A common recreation or community facility that is equipped with an emergency power supply system shall provide public charging stations for residents of the development and shall be equipped with sufficient outlets for residents to charge portable electronic devices and electronic equipment necessary for the health and safety of the residents.

c. For the purposes of this section:

"Emergency power supply system" means a power system providing an alternate source of electrical power in the event that the primary power source fails, consistent with performance requirements for emergency and standby power systems specified in the National Fire Protection Association Standard 110 (NFPA-110), or successor code or standard adopted by reference in the electrical subcode of the State Uniform Construction Code. Power systems covered include power sources, transfer equipment, controls, supervisory equipment, and all related electrical and mechanical auxiliary and accessory equipment needed to supply electrical power to the load terminals of the transfer equipment.

"Planned real estate development" means "planned real estate development" as defined in section 3 of P.L.1977, c.419 (C.45:22A-23).

2. a. The agency shall not enter an order registering a planned real estate development proposed to provide a common recreation or community facility, commonly referred to as a clubhouse or community room, unless the approval is conditioned upon installation of an emergency power supply system in accordance with section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. Notwithstanding any provision of law to the contrary, if an application for registration of a development proposed to provide a common recreation or community facility was initially submitted after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and deemed registered pursuant to subsection a. of section 10 of P.L.1977, c.419 (C.45:22A-30), the developer shall install an emergency power supply system in accordance with section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

3. a. Notwithstanding the provisions of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer may elect to treat the cost of an emergency power supply system required to be installed in a planned real estate development pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), not to exceed $10,000, as an expense which is not chargeable to capital account. A cost treated as an expense shall be allowed as a deduction for the privilege period in which the emergency power supply system is placed in service.

b. (1) An election under this section for any privilege period shall:

(a) specify the items of property comprising an emergency power supply system, to which the election applies, and the portion of the cost of each of those items which is to be taken into account under subsection a. of this section, and

(b) be made on the taxpayer's return for the tax imposed by section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period.

(2) The election shall be made in the manner as the director may by regulation prescribe.

(3) An election or specification with respect to a privilege period may be revoked by the taxpayer with respect to any property, and the revocation, once made, shall be irrevocable.

c. The director shall prescribe the rules and regulations necessary to carry out the provisions of this section, including, among others, those for determining the adjusted basis of the emergency power supply system property for the purposes of the

"Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.).

d. For the purposes of this section:

"Emergency power supply system" means an "emergency power supply system" as defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

4. a. Receipts from sales of property comprising an emergency power supply system required to be installed in a planned real estate development pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) are, subject to the conditions and limitations of this section, exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. Notwithstanding the provisions of subsection a. of this section, the seller shall charge and collect the tax imposed pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), from the purchaser on sales of property comprising an emergency power supply system at the rate then in effect, and the tax shall be returned as a rebate to the purchaser by the filing of a claim with the director for a rebate of the tax paid.

c. The filing of a claim for a rebate of the tax paid in accordance with this section shall be made by the purchaser on forms furnished by the director, and shall be accompanied by such information and documentation as may be determined to be necessary by the director to verify the tax paid on property comprising an emergency power supply system. The claim shall be filed within 360 days of the date that the property comprising an emergency power supply system is placed in service.

d. The director shall review or cause to be reviewed each complete claim filed for a rebate of the tax paid in accordance with this section, and shall determine or cause to be determined the amount to be returned as a rebate for the tax paid in connection with purchases of property comprising an emergency power supply system based on the tax separately stated on the sales slip, invoice, receipt, or other statement or memorandum given to the purchaser at the time of purchase; provided, however, that the director shall determine the amount to be returned as a rebate for the tax paid in connection with eligible purchases of property comprising an emergency power supply system made by a contractor on behalf of a purchaser based upon the separately stated cost of the property comprising an emergency power supply system, or, if the cost for property comprising an emergency power supply system is not separately stated on the contract, bill, or invoice given to the purchaser by the contractor, the amount to be returned as a rebate shall be based on 50 percent of the total amount of the sales price paid.

e. The director shall return or cause to be returned to each purchaser that has filed a complete claim for a rebate of the tax paid

in accordance with this section the amount determined to be returned as a rebate within six months of the date the complete claim is filed.

f. The director shall pay or cause to be paid to a purchaser interest on any amount determined to be returned as a rebate that is not returned within six months of the date the complete claim is filed, as is allowed and paid on overpayments of tax pursuant to section 7 of P.L.1992, c.175 (C.54:49-15.1).

g. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director may adopt, immediately upon filing with the Office of Administrative Law, such regulations, including, but not limited to, terms and conditions governing application for and payment of refunds, as the director deems necessary to implement the provisions of this section, which regulations shall be effective for a period not to exceed 180 days from the date of filing. Such regulations may thereafter be amended, adopted, or readopted by the director as the director deems necessary in accordance with the requirements of P.L.1968, c.410.

5. a. Notwithstanding the provisions of N.J.S.54A:5-1 and section 26 of P.L.2004, c.65 (C.54A:5-1.2), a taxpayer may elect to treat the cost of property comprising an emergency power supply system, not to exceed $10,000, as an expense which is not chargeable to capital account. A cost treated as an expense shall be allowed as a deduction for the taxable year in which the emergency power supply system is placed in service.

b. (1) An election under this section for any taxable year shall:

(a) specify the items of property comprising an emergency power supply system to which the election applies and the portion of the cost of each of those items which is to be taken into account under subsection a. of this section, and

(b) be made on the taxpayer's return for the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. for the taxable year.

(2) The election shall be made in the manner as the director may by regulation prescribe.

(3) An election or specification with respect to a privilege period may be revoked by the taxpayer with respect to any property, and the revocation, once made, shall be irrevocable.

(4) The election under this section shall be made by the business entity of a taxpayer, and shall apply to each owner of the business entity.

c. The director shall prescribe the rules and regulations necessary to carry out the provisions of this section, including, among others, those for determining the adjusted basis of the acquired property for the purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

d. For the purposes of this section:

"Emergency power supply system" means "emergency power supply system" as defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

6. This act shall take effect the first day of the fourth month next following enactment and be applicable to applications for construction permits and applications for registration that are not complete on that date, however, the Commissioner of Community Affairs shall immediately take all actions necessary to ensure that this act takes effect on the effective date.

STATEMENT

This bill would require the installation of an emergency power supply system to supply standby power to each clubhouse or community room in a new common interest community. Hurricane Sandy resulted in prolonged power outages throughout the State of New Jersey and surrounding areas. While Hurricane Sandy is the most recent and prominent example of extended power outages caused by extraordinary weather conditions, it was not an isolated occurrence with regard to extended power outages.

Many parts of New Jersey have been developed as common interest communities. Although these planned communities may isolate residential dwellings from public and commercial buildings, these communities often contain clubhouses or other facilities that could be used as a shelter during times of emergency.

By requiring new common interest communities to equip clubhouses and community rooms with an alternate source of electrical power, the bill will provide residents of these communities with a centrally-located, well-powered shelter to better wait-out future power outages. While this bill would not require existing common interest communities to retrofit their clubhouses and community rooms with emergency power supply systems, the sponsors recommend and encourage these communities to do so.

In recognition of the quasi-public purpose of this initiative, the bill provides a corporation business tax deduction and gross income tax deduction (not to exceed $10,000 in either case), and a sales tax exemption, for the purchase of equipment necessary for the installation of emergency power supply systems by developers of new common interest communities as required under the bill.