

ASSEMBLY, No. 459

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

SYNOPSIS

Provides remedy for prevailing party in construction code appeal and other incentives for efficient, appropriate administration of State Uniform Construction Code.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning enforcement and appeal of certain code
2 enforcement procedures under the State Uniform Construction
3 Code, and amending and supplementing P.L.1975, c.217.
4

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

7
8 1. Section 3 of P.L.1979, c.121 (C.52:27D-126a) is amended as
9 follows:

10 3. a. Where the appointing authority of any municipality shall
11 appoint an enforcing agency and construction board of appeals
12 pursuant to section 8 of P.L.1975, c.217 (C.52:27D-126), the
13 municipal governing body by ordinance, in accordance with
14 standards established by the commissioner, shall set enforcing
15 agency fees for plan review, construction permit, certificate of
16 occupancy, demolition permit, moving of building permit, elevator
17 permit and sign permit, provided, however, that such fees shall not
18 exceed the annual costs for the operation of the enforcing agency.
19 For the three-year period commencing with an enforcing agency's
20 initial participation in the "Electronic Permit Processing Review
21 System," developed and implemented pursuant to section 1 of
22 P.L.2021, c.70 (C.52:27D-124.4), the municipal governing body
23 may impose, and the enforcing agency may collect, construction
24 permit surcharge fees to defray the enforcing agency's startup costs
25 related to offering electronic plan review and scheduling.
26 Surcharge fees shall be established in accordance with standards
27 established by the commissioner.

28 b. If an enforcing agency fails to respond to an application for
29 review or otherwise perform its duties associated with the
30 inspection and permitting process set forth by P.L.1975, c. 217
31 (C.52:27D-119, et seq.) within the time period set forth by the
32 commissioner pursuant to P.L.1975, c.217, s.5 (C.52:27D-123), the
33 enforcing agency shall forfeit a percentage of the fee to which the
34 enforcing agency would otherwise be entitled under this section, as
35 follows:

36 (1) 15 percent of the fee if more than 21 days have elapsed since
37 the time of the required review or inspection, and

38 (2) An additional 15 percent of the remaining fee for every five
39 days in which the required review or inspection is delayed
40 thereafter.

41 c. If an enforcing agency requires an additional fee be paid for
42 expedited performance of its review or inspection under this
43 section, and the review or inspection is not performed on an

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 expedited basis, the additional fee shall be returned to the payee of
2 this fee by the enforcing agency.

3 (cf: P.L.2021, c. 70, s.3)

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5 2. (New section) Any enforcing agency or official appointed
6 pursuant to section 8 of P.L.1975, c.217 (C.52:27D-126) or licensed
7 under section 1 of P.L.1983, c.35 (C.52:27D-126.2) shall perform
8 the duties required of an official or enforcing agency under
9 P.L.1975, c.217 (C.52:27D-119 et seq.) in an efficient and
10 professional manner. Any enforcing agency or official, covered by
11 this section, who is found by the construction board of appeals,
12 under section 9 of P.L.1975, c.217 (C.52:27D-127), to have acted in
13 an abusive or malicious manner in conducting official inspection,
14 review or permitting duties, may be subject to disciplinary action,
15 including, but not limited to, the payment of a fine.

16 The commissioner shall adopt rules and regulations, pursuant to
17 the provisions of the "Administrative Procedure Act," P.L.1968,
18 c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this
19 section.

20

21 3. Section 9 of P.L.1975, c.217 (C.52:27D-127) is amended to
22 read as follows:

23 9. Construction board of appeals.

24 a. There shall be a construction board of appeals for each
25 county to hear appeals from actions of and decisions by the
26 enforcing agency provided that any municipality may establish its
27 own construction board of appeals to hear appeals from actions of
28 and decisions by the enforcing agency and further provided that
29 where two or more municipalities have combined to appoint a
30 construction official and subcode officials such combined
31 municipalities may establish a joint construction board of appeals.
32 Any such municipal or joint board shall hear appeals from the
33 actions of and decisions of the municipal or joint enforcing agency,
34 as the case may be, instead of the county board.

35 Every construction board of appeals shall consist of five
36 members. Each member of the board shall be qualified by
37 experience or training to perform the duties of members of the
38 construction board of appeals. In addition to the five regular
39 members, each construction board of appeals shall include two
40 special members, one of whom shall be a licensed professional
41 engineer with municipal construction experience, and one of whom
42 shall be a builder. The special members shall serve as additional
43 members of the board in any case involving an appeal of municipal
44 fees pursuant to P.L.1995, c.54 (C.40:55D-53.2 et al.). Board
45 members shall be appointed for a term of four years by the
46 appointing authority of the county or municipality in question or, in
47 the case of a joint municipal board, by means mutually determined
48 by the governing bodies of such municipalities. For the members

1 first appointed, the appointing authority shall designate the
2 appointees' terms so that one shall be appointed for a term of one
3 year, one for a term of two years, one for a term of three years, and
4 two for a term of four years. Vacancies on the board shall be filled
5 for the unexpired term. Members may be removed by the authority
6 appointing them for cause. A person may serve on more than one
7 construction board of appeals.

8 b. When an enforcing agency refuses to grant an application or
9 refuses to act upon application for a construction permit, or when
10 the enforcing agency makes any other decision, pursuant or related
11 to this act or the code, or if the enforcing agency acts in a manner
12 proscribed by section 2 of P.L. , c. (C.)(pending before the
13 Legislature as this bill), an owner, or his authorized agent, may
14 appeal in writing to the county or municipal or joint board,
15 whichever is appropriate. The board shall hear the appeal, render a
16 decision thereon and file its decision with a statement of the reasons
17 therefor with the enforcing agency from which the appeal has been
18 taken not later than 10 business days following the submission of
19 the appeal, unless such period of time has been extended with the
20 consent of the applicant. Such decision may affirm, reverse or
21 modify the decision of the enforcing agency or remand the matter to
22 the enforcing agency for further action. A copy of the decision
23 shall be forwarded by certified or registered mail to the party taking
24 the appeal. Failure by the board to hear an appeal and render and
25 file a decision thereon within the time limits prescribed in this
26 subsection shall be deemed a denial of the appeal for purposes of a
27 complaint, application or appeal to a court of competent
28 jurisdiction. A record of all decisions made by the board, properly
29 indexed, shall be kept by the enforcing agency and shall be subject
30 to public inspection during business hours. The board shall provide
31 rules for its procedure in accordance with this act and regulations
32 established by the commissioner.

33 c. When an enforcing agency's action or decision is appealed,
34 and the board of appeals rules in favor of the party bringing the
35 appeal, the prevailing party in the appeal shall be entitled to
36 reimbursement for the reasonable costs associated with pursuing the
37 appeal of the enforcing agency's original determination.

38 (cf: P.L.1995, c.54, s.4)

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40 4. This act shall take effect immediately.

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STATEMENT

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45 This bill provides for greater efficiency and accountability in the
46 administration of the State Uniform Construction Code (UCC), and
47 its various subcodes, which are promulgated by the Commissioner
48 of Community Affairs pursuant to the "State Uniform Construction

1 Code Act." This bill provides redress to those aggrieved in the
2 inspection, review, and permitting process set forth by the UCC.
3 Specifically, this bill would allow for the prevailing party in a
4 construction board appeal to recoup the costs associated with
5 bringing a successful appeal.

6 The bill further provides that a construction code official who
7 fails to act professionally in carrying out the enforcing agency's
8 responsibilities under the UCC or applicable subcode may incur
9 financial consequences. Under this bill, a construction code official
10 who attempts to carry out inspection, review or permitting
11 responsibilities in an abusive or malicious manner may be subject to
12 disciplinary action, including but not limited to the payment of a
13 fine established by rule. Finally, this bill would improve efficiency
14 in the administration of the UCC and its subcodes by requiring that
15 certain fees collected by an enforcing agency in conjunction with
16 plan review and permitting under the UCC be forfeited if the
17 agency does not perform these duties in a timely manner.