

SENATE, No. 219

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Senator Diegnan

SYNOPSIS

Establishes limits on zoning restrictions for certain electric battery storage equipment installation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning electric battery storage equipment installation
2 and supplementing and amending P.L.1975, c.291.

3

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

6

7 1. (New section) a. At a residential property, small electric
8 battery storage equipment shall be considered a permitted accessory
9 use and permitted accessory structure in all zoning or use districts
10 of a municipality. The small electric battery storage equipment
11 installation component of an application for development at a
12 residential property shall not require a variance pursuant to
13 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

14 b. As used in P.L. , c. (C.) (pending before the
15 Legislature as this bill), "residential property" means any building
16 being used, or to be used or held for use, entirely or partially as a
17 home or residence, together with the land upon which it is situate,
18 including, but not limited to, a single family dwelling, or a multiple
19 dwelling as defined under subsection (k) of section 3 of the "Hotel
20 and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-3).

21

22 2. (New section) a. An application for development submitted
23 solely for the installation of small electric battery storage equipment
24 at a commercial or industrial property shall not be subject to site
25 plan or other land use board review, shall not require variance relief
26 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) or any other law,
27 rule, or regulation, and shall be approved through the issuance of a
28 zoning permit by the administrative officer, provided the
29 application meets the following requirements:

30 (1) the proposed installation does not violate bulk requirements
31 applicable to the property, or the conditions of the original final
32 approval of the site plan or subsequent approvals for the existing
33 commercial or industrial property;

34 (2) all other conditions of prior approvals for the existing
35 commercial or industrial establishment, or any other existing
36 building continue to be met; and

37 (3) the proposed installation complies with the construction
38 codes adopted in or promulgated pursuant to the "State Uniform
39 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
40 any safety standards concerning the installation, and any State rule
41 or regulation concerning small electric battery storage equipment.

42 b. An application for development submitted solely for the
43 installation of small electric battery storage equipment at a
44 commercial or industrial property shall be deemed complete if:

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 (1) the application, including the permit fee and all necessary
2 documentation, is determined to be complete;
- 3 (2) a notice of incompleteness is not provided within 20 days
4 after the filing of the application; or
- 5 (3) a one-time written correction notice is not issued by the
6 jurisdiction within 20 days after filing of the application detailing
7 all deficiencies in the application and identifying any additional
8 information explicitly necessary to complete a review of the permit
9 application.
- 10 c. A power company, when connecting small electric battery
11 storage equipment subject to the approval of an application
12 submitted pursuant to this section, shall collaborate with developers
13 and owners, with consultation from the Board of Public Utilities, in
14 implementing the provisions of P.L. , c. (C.) (pending
15 before the Legislature as this bill).
- 16
- 17 3. (New section) a. (1) Within 30 days of enactment of P.L. ,
18 c. (C.) (pending before the Legislature as this bill), the
19 Commissioner of Community Affairs shall publish a model
20 ordinance to address installation, sightline, and setback
21 requirements and other health- and safety-related specifications for
22 small electric battery storage equipment and shall post the model
23 ordinance on the Internet website of the Department of Community
24 Affairs. The model ordinance published by the commissioner shall
25 not require the rulemaking process pursuant to the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
- 27 (2) The model ordinance shall address the requirements of
28 sections 1 through 3 of P.L. , c. (C. through) (pending
29 before the Legislature as this bill). The commissioner may
30 periodically update the small electric battery storage equipment
31 installation requirements of P.L. , c. (C.) (pending before
32 the Legislature as this bill) to reflect advances in electric battery
33 storage technology. The commissioner shall update the installation
34 requirements pursuant to the "Administrative Procedure Act,"
35 P.L.1968, c.410 (C.52:14B-1 et seq.) and promulgate them as
36 amendments to the model ordinance published pursuant to this
37 subsection.
- 38 b. (1) The model ordinance published by the commissioner
39 pursuant to this section shall be effective in each municipality,
40 except that a municipality may deviate from the reasonable
41 standards set forth in the model land use ordinance by adoption of
42 an ordinance pursuant to paragraph (2) of this subsection.
- 43 (2) A municipality may, by ordinance, adopt reasonable
44 standards to address installation, sightline, and setback
45 requirements or other health- and safety-related specifications for
46 small electric battery storage equipment. Nothing in this subsection
47 shall be deemed to authorize a municipality to require site plan

1 review by a municipal agency solely for the installation of small
2 electric battery storage equipment.

3

4 4. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to
5 read as follows:

6 3.1. "Days" means calendar days.

7 "Density" means the permitted number of dwelling units per
8 gross area of land that is the subject of an application for
9 development, including noncontiguous land, if authorized by
10 municipal ordinance or by a planned development.

11 "Developer" means the legal or beneficial owner or owners of a
12 lot or of any land proposed to be included in a proposed
13 development, including the holder of an option or contract to
14 purchase, or other person having an enforceable proprietary interest
15 in such land.

16 "Development" means the division of a parcel of land into two or
17 more parcels, the construction, reconstruction, conversion,
18 structural alteration, relocation or enlargement of any building or
19 other structure, or of any mining excavation or landfill, and any use
20 or change in the use of any building or other structure, or land or
21 extension of use of land, for which permission may be required
22 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

23 "Development potential" means the maximum number of
24 dwelling units or square feet of nonresidential floor area that may
25 be constructed on a specified lot or in a specified zone under the
26 master plan and land use regulations in effect on the date of the
27 adoption of the development transfer ordinance or on the date of the
28 adoption of the ordinance authorizing noncontiguous cluster, and in
29 accordance with recognized environmental constraints.

30 "Development regulation" means a zoning ordinance,
31 subdivision ordinance, site plan ordinance, official map ordinance
32 or other municipal regulation of the use and development of land, or
33 amendment thereto adopted and filed pursuant to P.L.1975, c.291
34 (C.40:55D-1 et seq.).

35 "Development restriction" means an agricultural restriction, a
36 conservation restriction, or a historic preservation restriction.

37 "Development transfer" or "development potential transfer"
38 means the conveyance of development potential, or the permission
39 for development, from one or more lots to one or more other lots by
40 deed, easement, or other means as authorized by ordinance.

41 "Development transfer bank" means a development transfer bank
42 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
43 or the State TDR Bank.

44 "Drainage" means the removal of surface water or groundwater
45 from land by drains, grading or other means and includes control of
46 runoff during and after construction or development to minimize
47 erosion and sedimentation, to assure the adequacy of existing and
48 proposed culverts and bridges, to induce water recharge into the

1 ground where practical, to lessen nonpoint pollution, to maintain
2 the integrity of stream channels for their biological functions as
3 well as for drainage, and the means necessary for water supply
4 preservation or prevention or alleviation of flooding.

5 "Electric vehicle supply equipment" or "electric vehicle service
6 equipment" or "EVSE" means the equipment, including the cables,
7 cords, conductors, connectors, couplers, enclosures, attachment
8 plugs, power outlets, power electronics, transformer, switchgear,
9 switches and controls, network interfaces, and point of sale
10 equipment and associated apparatus designed and used for the
11 purpose of transferring energy from the electric supply system to a
12 plug-in electric vehicle. "EVSE" may deliver either alternating
13 current or, consistent with fast charging equipment standards, direct
14 current electricity. "EVSE" is synonymous with "electric vehicle
15 charging station."

16 "Environmental commission" means a municipal advisory body
17 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

18 "Erosion" means the detachment and movement of soil or rock
19 fragments by water, wind, ice and gravity.

20 "Final approval" means the official action of the planning board
21 taken on a preliminarily approved major subdivision or site plan,
22 after all conditions, engineering plans and other requirements have
23 been completed or fulfilled and the required improvements have
24 been installed or guarantees properly posted for their completion, or
25 approval conditioned upon the posting of such guarantees.

26 "Floor area ratio" means the sum of the area of all floors of
27 buildings or structures compared to the total area of land that is the
28 subject of an application for development, including noncontiguous
29 land, if authorized by municipal ordinance or by a planned
30 development.

31 "General development plan" means a comprehensive plan for the
32 development of a planned development, as provided in section 4 of
33 P.L.1987, c.129 (C.40:55D-45.2).

34 "Governing body" means the chief legislative body of the
35 municipality. In municipalities having a board of public works,
36 "governing body" means such board.

37 "Historic district" means one or more historic sites and
38 intervening or surrounding property significantly affecting or
39 affected by the quality and character of the historic site or sites.

40 "Historic preservation restriction" means a "historic preservation
41 restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

42 "Historic site" means any real property, man-made structure,
43 natural object or configuration or any portion or group of the
44 foregoing of historical, archeological, cultural, scenic or
45 architectural significance.

46 "Inherently beneficial use" means a use which is universally
47 considered of value to the community because it fundamentally
48 serves the public good and promotes the general welfare. Such a

1 use includes, but is not limited to, a hospital, school, child care
2 center, group home, small electric battery storage equipment, or a
3 wind, solar or photovoltaic energy facility or structure.

4 "Instrument" means the easement, credit, or other deed
5 restriction used to record a development transfer.

6 "Interested party" means: (a) in a criminal or quasi-criminal
7 proceeding, any citizen of the State of New Jersey; and (b) in the
8 case of a civil proceeding in any court or in an administrative
9 proceeding before a municipal agency, any person, whether residing
10 within or without the municipality, whose right to use, acquire, or
11 enjoy property is or may be affected by any action taken under
12 P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use,
13 acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et
14 seq.), or under any other law of this State or of the United States
15 have been denied, violated or infringed by an action or a failure to
16 act under P.L.1975, c.291 (C.40:55D-1 et seq.).

17 "Land" includes improvements and fixtures on, above or below
18 the surface.

19 "Local utility" means any sewerage authority created pursuant to
20 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
21 seq.); any utilities authority created pursuant to the "municipal and
22 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
23 seq.); or any utility, authority, commission, special district or other
24 corporate entity not regulated by the Board of Regulatory
25 Commissioners under Title 48 of the Revised Statutes that provides
26 gas, electricity, heat, power, water or sewer service to a
27 municipality or the residents thereof.

28 "Lot" means a designated parcel, tract or area of land established
29 by a plat or otherwise, as permitted by law and to be used,
30 developed or built upon as a unit.

31 (cf: P.L.2021, c.171, s.5)

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33 5. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to
34 read as follows:

35 3.4. "Sedimentation" means the deposition of soil that has been
36 transported from its site of origin by water, ice, wind, gravity or
37 other natural means as a product of erosion.

38 "Sending zone" means an area or areas designated in a master
39 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291
40 (C.40:55D-1 et seq.), within which development may be restricted
41 and which is otherwise consistent with the provisions of section 8
42 of P.L.2004, c.2 (C.40:55D-144).

43 "Site plan" means a development plan of one or more lots on
44 which is shown (1) the existing and proposed conditions of the lot,
45 including but not necessarily limited to topography, vegetation,
46 drainage, flood plains, marshes and waterways, (2) the location of
47 all existing and proposed buildings, drives, parking spaces,
48 walkways, means of ingress and egress, drainage facilities, utility

1 services, landscaping, structures and signs, lighting, screening
2 devices, and (3) any other information that may be reasonably
3 required in order to make an informed determination pursuant to an
4 ordinance requiring review and approval of site plans by the
5 planning board adopted pursuant to article 6 of this act.

6 "Small electric battery storage equipment" means the equipment,
7 of up to 25 kilowatts in capacity, including the cables, cords,
8 conductors, connectors, couplers, enclosures, attachment plugs,
9 power outlets, power electronics, transformer, switchgear, switches
10 and controls, network interfaces, and point of sale equipment and
11 associated apparatus designed and used for the purpose of sto
12 energy from the grid or wind, solar or photovoltaic energy facility
13 or structure to a residential, commercial, or industrial end use.

14 "Standards of performance" means standards (1) adopted by
15 ordinance pursuant to subsection 52d. regulating noise levels, glare,
16 earthborn or sonic vibrations, heat, electronic or atomic radiation,
17 noxious odors, toxic matters, explosive and inflammable matters,
18 smoke and airborne particles, waste discharge, screening of
19 unsightly objects or conditions and such other similar matters as
20 may be reasonably required by the municipality or (2) required by
21 applicable federal or State laws or municipal ordinances.

22 "State Transfer of Development Rights Bank," or "State TDR
23 Bank," means the bank established pursuant to section 3 of
24 P.L.1993, c.339 (C.4:1C-51).

25 "Street" means any street, avenue, boulevard, road, parkway,
26 viaduct, drive or other way (1) which is an existing State, county or
27 municipal roadway, or (2) which is shown upon a plat heretofore
28 approved pursuant to law, or (3) which is approved by official
29 action as provided by this act, or (4) which is shown on a plat duly
30 filed and recorded in the office of the county recording officer prior
31 to the appointment of a planning board and the grant to such board
32 of the power to review plats; and includes the land between the
33 street lines, whether improved or unimproved, and may comprise
34 pavement, shoulders, gutters, curbs, sidewalks, parking areas and
35 other areas within the street lines.

36 "Structure" means a combination of materials to form a
37 construction for occupancy, use or ornamentation whether installed
38 on, above, or below the surface of a parcel of land.

39 "Subdivision" means the division of a lot, tract or parcel of land
40 into two or more lots, tracts, parcels or other divisions of land for
41 sale or development. The following shall not be considered
42 subdivisions within the meaning of this act, if no new streets are
43 created: (1) divisions of land found by the planning board or
44 subdivision committee thereof appointed by the chairman to be for
45 agricultural purposes where all resulting parcels are 5 acres or
46 larger in size, (2) divisions of property by testamentary or intestate
47 provisions, (3) divisions of property upon court order, including but
48 not limited to judgments of foreclosure, (4) consolidation of

1 existing lots by deed or other recorded instrument and (5) the
2 conveyance of one or more adjoining lots, tracts or parcels of land,
3 owned by the same person or persons and all of which are found
4 and certified by the administrative officer to conform to the
5 requirements of the municipal development regulations and are
6 shown and designated as separate lots, tracts or parcels on the tax
7 map or atlas of the municipality. The term "subdivision" shall also
8 include the term "resubdivision."

9 "Transcript" means a typed or printed verbatim record of the
10 proceedings or reproduction thereof.

11 "Variance" means permission to depart from the literal
12 requirements of a zoning ordinance pursuant to sections 47 and
13 subsections 29.2b., 57c. and 57d. of this act.

14 "Wind, solar or photovoltaic energy facility or structure" means a
15 facility or structure for the purpose of supplying electrical energy
16 produced from wind, solar, or photovoltaic technologies, whether
17 such facility or structure is a principal use, a part of the principal
18 use, or an accessory use or structure.

19 "Zoning permit" means a document signed by the administrative
20 officer (1) which is required by ordinance as a condition precedent
21 to the commencement of a use or the erection, construction,
22 reconstruction, alteration, conversion or installation of a structure or
23 building and (2) which acknowledges that such use, structure or
24 building complies with the provisions of the municipal zoning
25 ordinance or variance therefrom duly authorized by a municipal
26 agency pursuant to sections 47 and 57 of this act.

27 (cf: P.L.2009, c.146, s.2)

28

29 6. This act shall take effect on the first day of the fifth month
30 next following enactment, except that the Commissioner of
31 Community Affairs shall take any anticipatory actions necessary for
32 the implementation of this act.

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STATEMENT

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37 This bill would amend and supplement the "Municipal Land Use
38 Law," ("MLUL") P.L.1975, c.291 (C.40:55D-1 et seq.) to establish
39 limits on how local zoning codes may restrict the installation of
40 small electric battery storage equipment. The bill defines "small
41 electric battery storage equipment" as the equipment, of up to 25
42 kilowatts in capacity, including the cables, cords, conductors,
43 connectors, couplers, enclosures, attachment plugs, power outlets,
44 power electronics, transformer, switchgear, switches and controls,
45 network interfaces, and point of sale equipment and associated
46 apparatus designed and used for the purpose of transferring energy
47 from the grid or wind, solar or photovoltaic energy facility or
48 structure to the residential, commercial, or industrial end use.

1 At a residential property, the bill would require small electric
2 battery storage equipment to be considered a permitted accessory
3 use and permitted accessory structure in all zoning or use districts
4 of a municipality. Under the bill, the small electric battery storage
5 equipment installation component of an application for
6 development at a residential property would not require a use
7 variance, also known as a “d.” variance. Additionally, the bill
8 adjusts the “inherently beneficial use” definition in the MLUL to
9 include small electric battery storage equipment, thereby enhancing
10 the ease of obtaining a variance when needed for certain
11 development. The bill defines “residential property” as any
12 building being used, or to be used or held for use, entirely or
13 partially as a home or residence, together with the land upon which
14 it is situated, including, but not limited to, a single family dwelling,
15 or a multiple dwelling as defined under subsection (k) of section 3
16 of the “Hotel and Multiple Dwelling Law,” P.L.1967, c.76
17 (C.55:13A-3).

18 Under the bill, an application for development submitted solely
19 for the installation of small electric battery storage equipment at a
20 commercial or industrial property would not be subject to site plan
21 or other land use board review, and would not require variance
22 relief. These development applications would be approved through
23 the issuance of a zoning permit, provided:

24 (1) the proposed installation would not violate bulk
25 requirements of the property, or conditions of the original final
26 approval of the site plan or subsequent approvals for the property;

27 (2) all other conditions of prior approvals for the property
28 continue to be met; and

29 (3) the proposed installation complies with the "State Uniform
30 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
31 any safety standards concerning the installation, and any State rule
32 or regulation concerning small electric battery storage equipment.

33 The bill also expressly establishes standards for when an
34 application for development solely for the installation of small
35 electric battery storage equipment at a commercial or industrial
36 property would be deemed complete. Specifically, the application
37 would be deemed complete if: (1) the application, including the
38 permit fee and all necessary documentation, is determined to be
39 complete; (2) a notice of incompleteness is not provided within 20
40 days after the filing of the application; or (3) a one-time written
41 correction notice is not issued by the jurisdiction within 20 days
42 after filing of the application detailing all deficiencies and
43 identifying any additional information necessary.

44 The bill also directs a power company when connecting certain
45 small electric battery storage equipment, to collaborate with
46 developers and owners, with consultation from the Board of Public
47 Utilities, in implementing the requirements of the bill.

S219 B.SMITH

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1 The bill directs the Commissioner of Community Affairs, within
2 30 days of the bill's enactment, to publish a model land use
3 ordinance to address installation, sightline, and setback
4 requirements and other health- and safety-related specifications for
5 small electric battery storage equipment. The model land use
6 ordinance would not require the rulemaking process pursuant to the
7 "Administrative Procedure Act." The bill authorizes the
8 commissioner to periodically update the model land use ordinance
9 through the "Administrative Procedure Act" process. The model
10 land use ordinance would be effective in all municipalities.,
11 however, the bill authorizes By ordinance, a municipality would
12 be authorized to adopt an ordinance deviating from the model land
13 use ordinance through adoption of if it sets forth reasonable
14 standards to address installation, sightline, and setback
15 requirements or other health- and safety-related specifications for
16 small electric battery storage equipment. However, the bill would
17 not authorize a municipality to require site plan review by a
18 municipal agency solely for the installation of small electric battery
19 storage equipment.

20 The bill would take effect on the first day of the fifth month next
21 following enactment, except that the Commissioner of Community
22 Affairs is directed may to take any necessary anticipatory actions
23 necessary prior to that date for implementation.