

58:16A-103

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2013 **CHAPTER:** 107

NJSA: 58:16A-103 (Provides limited exemption from development regulations to allow certain structures to be raised as high as the highest applicable flood elevation standard)

BILL NO: A3890 (Substituted for S2598)

SPONSOR(S) Eustace and others

DATE INTRODUCED: February 26, 2013

COMMITTEE: **ASSEMBLY:** Environment and Solid Waste

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 24, 2013

SENATE: June 24, 2013

DATE OF APPROVAL: August 7, 2013

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted) Yes

A3890

SPONSOR'S STATEMENT (Begins on page 2 of introduced bill): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL NOTE: No

S2598

SPONSOR'S STATEMENT (Begins on page 2 introduced bill): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Required home raisings free of land-use laws," The Press of Atlantic City, 8-8-2013

LAW/KR

P.L.2013, CHAPTER 107, *approved August 7, 2013*
Assembly, No. 3890 (*Second Reprint*)

1 AN ACT concerning certain flood elevation standards and ²local
2 land use restrictions and supplementing Title 58 of the Revised
3 Statutes] development regulations and supplementing P.L.1975,
4 c.291 (C.40:55D-1 et seq.)².

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

8
9 ²1. a. Notwithstanding the provisions of any other law to the
10 contrary, except as otherwise provided pursuant to subsection b. of
11 this section, a person shall be exempt from any local land use
12 restriction that otherwise would be violated as a result of raising an
13 existing structure to ¹[a new FEMA base flood elevation] the
14 highest applicable flood elevation standard¹, provided, however,
15 the exemption shall apply only to the ¹minimum¹ extent or degree
16 necessary to allow the structure to meet ¹[the new FEMA base
17 flood elevation] the highest applicable flood elevation standard¹.

18 b. ¹[The exemption established pursuant to subsection a. of this
19 section shall not apply to:

20 (1) new construction; or

21 (2) a structure that is altered:

22 (a) after the new FEMA base flood elevation applicable thereto
23 is made public; and

24 (b) in a manner that would increase, exacerbate, or contribute to
25 the extent of noncompliance with the local land use restriction.]

26 (1) Except as otherwise provided in paragraph (2) of this
27 subsection, the exemption established pursuant to subsection a. of
28 this section shall not be available to a person who has altered a
29 structure and, had the alteration not been made, the structure could
30 have been raised to meet the highest applicable flood elevation
31 standard either without the exemption or with an exemption of
32 lesser degree than is needed with the alteration.

33 (2) The provisions of paragraph (1) of this subsection shall not
34 apply to any alteration to a structure that was initiated before the
35 new FEMA base flood elevation was publicly proposed by the
36 Federal Emergency Management Agency or the applicable flood
37 elevation standard was adopted by the Department of
38 Environmental Protection, as the case may be.¹

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 AEN committee amendments adopted May 13, 2013.

²Senate floor amendments adopted June 20, 2013.

1 c. Nothing in this act shall be construed to exempt a person
2 from any rule or regulation adopted by the Department of
3 Environmental Protection.

4 d.¹ As used in this ¹act, “new” section:

5 “Highest applicable flood elevation standard” means the new
6 FEMA base flood elevation plus an additional two feet, or any
7 applicable flood elevation standard required pursuant to N.J.A.C.
8 7:13-1.1 et seq. and adopted by the Department of Environmental
9 Protection pursuant to the “Flood Hazard Area Control Act,”
10 P.L.1962, c.19 (C.58:16A-50 et seq.), whichever is higher.

11 “New¹ FEMA base flood elevation” means any advisory base
12 flood elevation or effective base flood elevation proposed or
13 adopted after October 29, 2012, by the Federal Emergency
14 Management Agency.】

15 1. a. As used in this section:

16 “Existing structure” means any structure that existed on October
17 28, 2012.

18 “Highest applicable flood elevation standard” means the new
19 FEMA base flood elevation plus an additional three feet, or any
20 applicable flood elevation standard required pursuant to N.J.A.C.
21 7:13-1.1 et seq. and adopted by the Department of Environmental
22 Protection pursuant to the “Flood Hazard Area Control Act,”
23 P.L.1962, c.19 (C.58:16A-50 et seq.), whichever is higher.

24 “New and appropriate elevation” means any elevation to which a
25 structure is raised, or is to be raised, that is equal to or higher than
26 the applicable new FEMA base flood elevation, provided, however,
27 in no case shall the new and appropriate elevation exceed the
28 highest applicable flood elevation standard.

29 “New FEMA base flood elevation” means any base flood
30 elevation proposed or adopted after October 28, 2012, by the
31 Federal Emergency Management Agency.

32 “Original dimensions” means the exact vertical and horizontal
33 dimensions of a structure as it existed on October 28, 2012.

34 “Sandy-damaged structure” means any structure that existed on
35 October 28, 2012 and was damaged or destroyed by Hurricane
36 Sandy.

37 b. (1) Notwithstanding the provisions of any other law to the
38 contrary, except as otherwise provided pursuant to paragraph (2) of
39 this subsection, a person shall be exempt from any development
40 regulation, including any requirement to apply for a variance
41 therefrom, that otherwise would be violated as a result of raising an
42 existing structure to a new and appropriate elevation, or
43 constructing a staircase or other attendant structure necessitated by
44 such raising, provided, however, this exemption shall apply only to
45 the minimum extent or degree necessary to allow the structure to
46 meet the new and appropriate elevation with adequate means of
47 ingress and egress.

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

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

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

26

27 2. This act shall take effect immediately.

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32 Provides limited exemption from development regulations to
33 allow certain structures to be raised as high as the highest
34 applicable flood elevation standard.

ASSEMBLY, No. 3890

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 26, 2013

Sponsored by:

Assemblyman TIMOTHY J. EUSTACE

District 38 (Bergen and Passaic)

Assemblywoman HOLLY SCHEPISI

District 39 (Bergen and Passaic)

Assemblyman SCOTT RUDDER

District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Provides limited exemption from local land use restrictions to allow certain existing structures to be raised to new FEMA base flood elevations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/8/2013)

1 AN ACT concerning certain flood elevation standards and local land
2 use restrictions and supplementing Title 58 of the Revised
3 Statutes.

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

7
8 1. a. Notwithstanding the provisions of any other law to the
9 contrary, except as otherwise provided pursuant to subsection b. of
10 this section, a person shall be exempt from any local land use
11 restriction that otherwise would be violated as a result of raising an
12 existing structure to a new FEMA base flood elevation, provided,
13 however, the exemption shall apply only to the extent or degree
14 necessary to allow the structure to meet the new FEMA base flood
15 elevation.

16 b. The exemption established pursuant to subsection a. of this
17 section shall not apply to:

18 (1) new construction; or

19 (2) a structure that is altered:

20 (a) after the new FEMA base flood elevation applicable thereto
21 is made public; and

22 (b) in a manner that would increase, exacerbate, or contribute to
23 the extent of noncompliance with the local land use restriction.

24 c. As used in this act, “new FEMA base flood elevation” means
25 any advisory base flood elevation or effective base flood elevation
26 proposed or adopted after October 29, 2012, by the Federal
27 Emergency Management Agency.

28
29 2. This act shall take effect immediately.

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STATEMENT

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34 This bill would provide a person with a limited exemption from
35 local land use restrictions when raising a structure to meet a new
36 FEMA base flood elevation, if raising the structure would otherwise
37 result in a violation of the local land use restriction.

38 A “new FEMA base flood elevation” is defined in the bill to
39 mean any advisory base flood elevation or effective base flood
40 elevation proposed or adopted after October 29, 2012, by the
41 Federal Emergency Management Agency (FEMA). A base flood
42 elevation, as calculated by FEMA, represents the elevation of a
43 flood with a one percent chance of occurrence during any given
44 year, commonly referred to as a “100-year flood.” A structure that
45 is not elevated to the applicable FEMA-issued base flood elevation
46 for its location is subject to a higher flood insurance premium under
47 the National Flood Insurance Program. For an existing structure,
48 raising the structure to meet a newly proposed or adopted base flood

A3890 EUSTACE, SCHEPISI

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1 elevation may, in certain cases, violate local land use restrictions,
2 such as a maximum height restriction.

3 This bill would provide a partial exemption from local land use
4 restrictions, so as to allow a property owner to raise an existing
5 structure to a new FEMA base flood elevation without violating
6 local land use restrictions. The exemption would apply only to the
7 extent or degree necessary to meet the new FEMA base flood
8 elevation applicable to the location in question.

9 The exemption would not be available for new construction.
10 Likewise, the exemption would not be available for a structure that
11 is altered (1) after a new FEMA base flood elevation applicable
12 thereto is made public, and (2) in a manner that would increase,
13 exacerbate, or contribute to noncompliance with the local land use
14 restriction upon raising the structure to the new FEMA base flood
15 elevation.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3890

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2013

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 3890.

This bill, as amended by the committee, would provide a person with a limited exemption from local land use restrictions when raising an existing structure to meet certain State or federal flood elevation standards, if raising the structure would otherwise result in a violation of the local land use restriction.

In particular, the exemption would allow a person to raise the structure to the “highest applicable flood elevation standard,” which is defined in the bill to be the higher of two standards: (1) the new Federal Emergency Management Agency (FEMA) base flood elevation plus two additional feet, or (2) any applicable flood elevation standard required pursuant to rules and regulations adopted by the Department of Environmental Protection (DEP) pursuant to the “Flood Hazard Area Control Act.”

A “new FEMA base flood elevation” is defined in the bill to mean any advisory base flood elevation or effective base flood elevation proposed or adopted after October 29, 2012, by the FEMA. A base flood elevation, as calculated by FEMA, represents the elevation of a flood with a one percent chance of occurrence during any given year, commonly referred to as a “100-year flood.” A structure that is not elevated to the applicable FEMA-issued base flood elevation for its location is subject to a higher flood insurance premium under the National Flood Insurance Program.

For an existing structure, raising the structure to meet one of these flood elevation standards may, in certain cases, violate local land use restrictions, such as a maximum height restriction or a setback restriction. This bill would provide a partial exemption from such local land use restrictions, so as to allow a property owner to raise an existing structure to the highest applicable flood elevation standard without violating local land use restrictions. The exemption would apply only to the minimum extent or degree necessary to meet the higher of the two standards, as they apply to the location in question.

The bill would not apply to new construction. Also, the bill would provide that the exemption would not be available to a person who has altered a structure under circumstances where, had the alteration not been made, the structure could have been raised to meet the highest applicable flood elevation standard either without the exemption or with an exemption of lesser degree than what is needed with the alteration. However, a person would not be barred from qualifying for the exemption in this manner because of any alteration that was initiated before the applicable standard was publicly known, meaning, either the new FEMA base flood elevation was publicly proposed by FEMA or the applicable flood elevation standard was adopted by DEP, as the case may be.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) clarify the circumstances under which a person would be barred from qualifying for the exemption because of alterations made to the structure that create or exacerbate the need for an exemption;

2) clarify that the exemption would not apply to any rule or regulation adopted by the DEP;

3) provide that the exemption would allow a person to raise an existing structure to the minimum extent or degree necessary to meet the new FEMA base flood elevation plus an additional two feet, rather than just the new FEMA base flood elevation; and

4) provide that the exemption would allow a person to raise an existing structure to the minimum extent or degree necessary to meet, in addition to a new FEMA base flood elevation plus two feet, any applicable flood elevation standard required by the DEP pursuant to the "Flood Hazard Area Control Act" that may be higher.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3890

with Senate Floor Amendments
(Proposed by Senator B.SMITH)

ADOPTED: JUNE 20, 2013

These floor amendments would provide for the exemption to apply to “development regulations,” as defined pursuant to section 4 of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-4), rather than to “local land use restrictions.” The term “development regulations” is more accurate for the purposes of this bill. The amendments would also provide that the exemption would apply not just when raising existing structures, but also when using a raised elevation in the repair or reconstruction of a structure damaged by Hurricane Sandy. Moreover, the amendments would clarify that the exemption would apply not just to the raising of a structure, but also to the construction of a staircase or other attendant structure necessitated by such raising. In addition, the amendments would clarify the scope and applicability of the exemption by changing the definition of “highest applicable flood elevation standard” and “new FEMA base flood elevation,” and by establishing and defining the following new terms: “existing structure,” “new and appropriate elevation,” “original dimensions,” and “Sandy-damaged structure.” Finally, the amendments would make various technical changes.

SENATE, No. 2598

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2013

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JIM WHELAN

District 2 (Atlantic)

SYNOPSIS

Provides limited exemption from local land use restrictions to allow certain existing structures to be raised to new FEMA base flood elevations.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain flood elevation standards and local land
2 use restrictions and supplementing Title 58 of the Revised
3 Statutes.

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

7
8 1. a. Notwithstanding the provisions of any other law to the
9 contrary, except as otherwise provided pursuant to subsection b. of
10 this section, a person shall be exempt from any local land use
11 restriction that otherwise would be violated as a result of raising an
12 existing structure to a new FEMA base flood elevation, provided,
13 however, the exemption shall apply only to the extent or degree
14 necessary to allow the structure to meet the new FEMA base flood
15 elevation.

16 b. The exemption established pursuant to subsection a. of this
17 section shall not apply to:

18 (1) new construction; or

19 (2) a structure that is altered:

20 (a) after the new FEMA base flood elevation applicable thereto
21 is made public; and

22 (b) in a manner that would increase, exacerbate, or contribute to
23 the extent of noncompliance with the local land use restriction.

24 c. As used in this act, “new FEMA base flood elevation” means
25 any advisory base flood elevation or effective base flood elevation
26 proposed or adopted after October 29, 2012, by the Federal
27 Emergency Management Agency.

28
29 2. This act shall take effect immediately.

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STATEMENT

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34 This bill would provide a person with a limited exemption from
35 local land use restrictions when raising a structure to meet a new
36 FEMA base flood elevation, if raising the structure would otherwise
37 result in a violation of the local land use restriction.

38 A “new FEMA base flood elevation” is defined in the bill to
39 mean any advisory base flood elevation or effective base flood
40 elevation proposed or adopted after October 29, 2012, by the
41 Federal Emergency Management Agency (FEMA). A base flood
42 elevation, as calculated by FEMA, represents the elevation of a
43 flood with a one percent chance of occurrence during any given
44 year, commonly referred to as a “100-year flood.” A structure that
45 is not elevated to the applicable FEMA-issued base flood elevation
46 for its location is subject to a higher flood insurance premium under
47 the National Flood Insurance Program. For an existing structure,
48 raising the structure to meet a newly proposed or adopted base flood

1 elevation may, in certain cases, violate local land use restrictions,
2 such as a maximum height restriction.

3 This bill would provide a partial exemption from local land use
4 restrictions, so as to allow a property owner to raise an existing
5 structure to a new FEMA base flood elevation without violating
6 local land use restrictions. The exemption would apply only to the
7 extent or degree necessary to meet the new FEMA base flood
8 elevation applicable to the location in question.

9 The exemption would not be available for new construction.
10 Likewise, the exemption would not be available for a structure that
11 is altered (1) after a new FEMA base flood elevation applicable
12 thereto is made public, and (2) in a manner that would increase,
13 exacerbate, or contribute to noncompliance with the local land use
14 restriction upon raising the structure to the new FEMA base flood
15 elevation.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 2598

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 25, 2013

The Senate Environment and Energy Committee favorably reports Senate Bill No. 2598 with committee amendments.

This bill, with committee amendments, would provide a person with a limited exemption from local land use restrictions when raising an existing structure to meet certain State or federal flood elevation standards, if raising the structure would otherwise result in a violation of the local land use restriction.

In particular, the exemption would allow a person to raise the structure to the “highest applicable flood elevation standard,” which is defined in the bill to be the higher of two standards: (1) the new Federal Emergency Management Agency (FEMA) base flood elevation plus two additional feet, or (2) any applicable flood elevation standard required pursuant to rules and regulations adopted by the Department of Environmental Protection (DEP) pursuant to the “Flood Hazard Area Control Act.”

A “new FEMA base flood elevation” is defined in the bill to mean any advisory base flood elevation or effective base flood elevation proposed or adopted after October 29, 2012, by the FEMA. A base flood elevation, as calculated by FEMA, represents the elevation of a flood with a one percent chance of occurrence during any given year, commonly referred to as a “100-year flood.” A structure that is not elevated to the applicable FEMA-issued base flood elevation for its location is subject to a higher flood insurance premium under the National Flood Insurance Program.

For an existing structure, raising the structure to meet one of these flood elevation standards may, in certain cases, violate local land use restrictions, such as a maximum height restriction or a setback restriction. This bill would provide a partial exemption from such local land use restrictions, so as to allow a property owner to raise an existing structure to the highest applicable flood elevation standard without violating local land use restrictions. The exemption would apply only to the minimum extent or degree necessary to meet the higher of the two standards, as they apply to the location in question.

The bill would not apply to new construction. Also, the bill would provide that the exemption would not be available to a person who has

altered a structure under circumstances where, had the alteration not been made, the structure could have been raised to meet the highest applicable flood elevation standard either without the exemption or with an exemption of lesser degree than what is needed with the alteration. However, a person would not be barred from qualifying for the exemption in this manner because of any alteration that was initiated before the applicable standard was publicly known, meaning, either the new FEMA base flood elevation was publicly proposed by FEMA or the applicable flood elevation standard was adopted by DEP, as the case may be.

The committee amendments:

- 1) Clarify the circumstances under which a person would be barred from qualifying for the exemption because of alterations made to the structure that create or exacerbate the need for an exemption;
- 2) Clarify that the exemption would not apply to any rule or regulation adopted by the Department of Environmental Protection; and
- 3) Provide that the exemption would allow a person to raise an existing structure to the minimum extent or degree necessary to meet the new FEMA base flood elevation plus an additional two feet, rather than just the new FEMA base flood elevation; and
- 4) Provide that the exemption would allow a person to raise an existing structure to the minimum extent or degree necessary to meet, in addition to a new FEMA base flood elevation plus two feet, any applicable flood elevation standard required by the Department of Environmental Protection pursuant to the "Flood Hazard Area Control Act" that may be higher.

SENATE SUBSTITUTE FOR
SENATE, No. 2598

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED JUNE 20, 2013

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JIM WHELAN

District 2 (Atlantic)

SYNOPSIS

Provides limited exemption from development regulations to allow certain structures to be raised as high as the highest applicable flood elevation standard.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate.



1 AN ACT concerning certain flood elevation standards and
2 development regulations and supplementing P.L.1975, c.291
3 (C.40:55D-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. As used in this section:

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

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

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

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

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

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

30 b. (1) Notwithstanding the provisions of any other law to the
31 contrary, except as otherwise provided pursuant to paragraph (2) of
32 this subsection, a person shall be exempt from any development
33 regulation, including any requirement to apply for a variance
34 therefrom, that otherwise would be violated as a result of raising an
35 existing structure to a new and appropriate elevation, or
36 constructing a staircase or other attendant structure necessitated by
37 such raising, provided, however, this exemption shall apply only to
38 the minimum extent or degree necessary to allow the structure to
39 meet the new and appropriate elevation with adequate means of
40 ingress and egress.

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

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

13 (2) The exemption established pursuant to paragraph (1) of this
14 subsection shall not be available to a person whose repair or
15 reconstruction plan would alter the original dimensions of a
16 structure when, if not for the alteration, the structure could
17 otherwise be raised to meet the new and appropriate elevation either
18 without the exemption or with an exemption of lesser degree than is
19 needed with the alteration.

20

21 2. This act shall take effect immediately.

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STATEMENT

25

26 This floor substitute would provide a person with a limited
27 exemption from any development regulation when raising certain
28 structures to meet State or federal flood elevation standards. The
29 exemption would be available only to the extent that raising the
30 structure, or constructing a staircase or other attendant structure
31 necessitated by such raising, would otherwise result in a violation
32 of the development regulation. A person would also be exempt
33 from any requirement to apply for a variance from a development
34 regulation for such purposes. The exemption would be available for
35 raising any structure that existed on October 28, 2012, or for using a
36 raised elevation when lawfully repairing or reconstructing a
37 structure damaged by Hurricane Sandy.

38 In particular, the exemption would allow a person to raise the
39 structure to a “new and appropriate elevation,” as defined by the
40 substitute. The substitute provides that the new and appropriate
41 elevation, to which a structure may be raised in keeping with the
42 exemption, shall not exceed the “highest applicable flood elevation
43 standard,” which is defined in the bill to be the higher of two
44 standards: (1) the new Federal Emergency Management Agency
45 (FEMA) base flood elevation plus three additional feet, or (2) any
46 applicable flood elevation standard required pursuant to rules and

1 regulations adopted by the Department of Environmental Protection
2 (DEP) pursuant to the “Flood Hazard Area Control Act.”

3 The term “new FEMA base flood elevation” is defined in the bill
4 to mean any base flood elevation proposed or adopted after October
5 28, 2012, by FEMA. A base flood elevation, as calculated by
6 FEMA, represents the elevation of a flood with a one percent
7 chance of occurrence during any given year, commonly referred to
8 as a “100-year flood.” A structure that is not elevated to the
9 applicable FEMA-issued base flood elevation for its location is
10 subject to a higher flood insurance premium under the National
11 Flood Insurance Program.

12 Raising a structure to a new and appropriate elevation may, in
13 certain cases, violate development regulations, such as a maximum
14 height restriction or a setback restriction. This substitute would
15 allow a property owner to raise a structure to a new and appropriate
16 elevation without violating such development regulations or
17 needing to apply for a variance from them. However, the
18 exemption would apply only to the minimum extent or degree
19 necessary to meet the new and appropriate elevation with adequate
20 means of ingress and egress.

21 The exemption would not be available for any new construction
22 other than the reconstruction of a structure damaged by Hurricane
23 Sandy. Finally, the exemption would not be available in situations
24 where the need for the exemption is wholly or partially the result of
25 alterations made or to be made to the dimensions of the structure
26 after October 28, 2012.