

26:3-31.4 to 26:3-31.10

LEGISLATIVE HISTORY CHECKLIST

NJSA 26:3-31.4 to 26:3-31.10; 46:8-28 ("Emergency Fuel Oil Delivery Act"--
permit local government to supply
tenants with fuel oil in certain
cases--provide for payment)
LAWS 1980 CHAPTER 170
Bill No. A627
Sponsor(s) Baer
Date Introduced Jan. 21, 1980
Committee: Assembly Commerce, Industry and Professions
Senate County and Municipal Government
Amended during passage Yes ~~No~~ Assembly Committee Substitute
(2nd OCR) enacted. Amend-
Date of Passage: Assembly June 16, 1980 ments denoted by asterisks
Senate Sept. 22, 1980
Date of approval Dec. 18, 1980
Following statements are attached if available:
Sponsor statement Yes ~~No~~
Committee Statement: Assembly Yes ~~No~~
Senate Yes ~~No~~
Fiscal Note ~~Yes~~ No
Veto Message ~~Yes~~ No
Message on signing Yes ~~No~~
Following were printed:
Reports ~~Yes~~ No
Hearings ~~Yes~~ No

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[SECOND OFFICIAL COPY REPRINT]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 627

STATE OF NEW JERSEY

ADOPTED MAY 19, 1980

AN ACT to allow certain public officers to secure fuel oil for tenants where a landlord of a residential rental property fails to supply heat in certain cases and to provide for payment therefor and to provide penalties for violations of this act and amending section 2 of P. L. 1974, c. 50 (C. 46:8-28).

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

1 1. (New section) This act shall be known and may be cited as
 2 "The Emergency Fuel Oil Delivery Act."

1 2. (New section) ****[A]**** ***The governing body of any munici-*
 2 *pality may provide, by ordinance, that the*** local health officer
 3 or other officer designated ****[***by the municipality may act expedi-*
 4 *tiously with the authorization of the governing body of the munici-*
 5 *pality]*** ***in the ordinance shall, whenever necessary*** to protect
 6 the health and safety of residential tenants^{**}, *act*** as an agent for
 7 a landlord in engaging a fuel oil dealer to deliver fuel oil at a rea-
 8 sonable price per gallon and to refire the burner to restore the
 9 proper heating of any residential property rented by said landlord;
 10 provided, however, that at least 12 hours have elapsed, if the out-
 11 side air temperature is between 33° and 55° F., inclusive, or at least
 12 4 hours have elapsed, if the outside air temperature is 32° F. or
 13 less, since the tenant has lodged a complaint with any municipal
 14 officer or agency, prior to which ***complaint*** a bona fide attempt
 15 has been made ***by the tenant or his representative*** to notify the
 16 landlord of the lack of heat, and the landlord has failed to take
 17 appropriate action. Lack of heat means maintaining less heat than
 18 required by R. S. 26:3-31.

1 3. (New section) Any fuel oil dealer who delivers fuel oil or
 2 refires the burner in accordance with section 2 of this act may bill
 3 the landlord directly^{**},^{**} or the municipality in which the rental
 4 property is located may issue a voucher to the fuel oil dealer who
 5 delivered the fuel oil for the money amount due on the fuel oil
 6 delivered and the service charge for refiring the burner, if any.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

7 The voucher shall be paid in the manner provided for the approval
8 and payment of claims pursuant to N. J. S. 40A :5-17.

1 4. (New section) Any landlord or his agent whose negligence or
2 failure to act results in ****[the institution of any of the provisions**
3 **set forth in]** **** municipal action pursuant to**** section 2 of this
4 act shall be liable to a civil penalty of not more than \$300.00 for
5 each affected dwelling unit in the residential property. Such pen-
6 alty shall be recoverable by the municipality in a civil action by a
7 summary proceeding under the "Penalty Enforcement Law"
8 (N. J. S. 2A :58-1 et seq.). Any action to collect or enforce any such
9 penalty shall be brought in the Superior Court, county district
10 court or municipal court. The ****[penalty shall be payable to the**
11 **municipal clerk for deposit in the municipal treasury]** **** amount**
12 **of such penalty shall be paid to the municipality to be used for**
13 **general municipal purposes.****

1 5. (New section) In any penalty enforcement proceeding brought
2 pursuant to this act the court shall also order the landlord or his
3 agent to reimburse the municipality for the actual costs incurred
4 for any fuel oil delivered and the service charge for refiring the
5 burner, if any, and for reasonable attorney's fees and costs. The
6 court shall further be empowered to issue any appropriate in-
7 junctive orders, and to authorize immediate collection of reimburs-
8 able costs due the municipality out of the goods and chattels of the
9 landlord, including all sums due **** , or which may come due,**** as
10 present or future rents. Any landlord who prevails in such an
11 action shall be entitled to reimbursement by the municipality for
12 all reasonable costs and expenses. Such landlord, however, shall
13 still remain responsible for the cost of any fuel oil delivered and any
14 charge for refiring the burner incurred by the municipality.

1 ***[6. (New section) Notwithstanding the provisions of P. L. 1976,**
2 **c. 68 (C. 40A :4-45.1 et seq.) or rules and regulations promulgated**
3 **pursuant thereto, any increase in expenditure required as a result**
4 **of this act shall be deemed mandated costs and shall not be subject**
5 **to the expenditure limitations imposed pursuant to P. L. 1976,**
6 **c. 68.]***

1 ***[7.]* *6.*** (New section) No municipality or its employees shall
2 be liable for any damages to any person or property in enforcing
3 this act except for the gross negligence or malfeasance of any
4 municipal official, officer or employee, and under no circumstances
5 shall a municipality be held liable for damages from the lack of
6 heat in the residential property.

1 ***[8.]* *7.*** (New section) The provisions of this act shall not
2 apply to owner-occupied ****[two and three unit]**** residential rental
3 properties ****containing five units or less****.

1 ***[9.]*** *8.* Section 2 of P. L. 1974, c. 50 (C. 46:8-28) is amended
2 as follows:

3 2. Every landlord shall, within 30 days following the effective
4 date of this act, or at the time of the creation of the first tenancy in
5 any newly constructed or reconstructed building, file with the clerk
6 of the municipality in which the residential property is situated,
7 a statement which shall contain the following information:

8 a. The name and address of the record owner or owners of the
9 premises and the record owner or owners of the rental business if
10 not the same persons;

11 b. If the record owner is a corporation, the name and address of
12 the registered agent and corporate officers of said corporation;

13 c. If the address of any record owner is not located in the county
14 in which the premises are located, the name and address of a person
15 who resides in or has an office in the county in which the premises
16-20 are located and is authorized to accept notice from a tenant and to
21 issue receipts therefor and to accept service of process on behalf
22 of the record owner;

23 d. The name and address of the managing agent of the premises,
24 if any;

25 e. The name and address, including the dwelling unit, apartment
26 or room number of the superintendent, janitor, custodian or other
27 individual employed by the record owner or managing agent to
28 provide regular maintenance service, if any;

29 f. The name, address and telephone number of an individual
30 representative of the record owner or managing agent who may be
31 reached or contacted at any time in the event of an emergency
32 affecting the premises or any unit of dwelling space therein, includ-
33 ing such emergencies as the failure of any essential service or
34 system, and who has the authority to make emergency decisions
35 concerning the building and any repair thereto or expenditure in
36 connection therewith;

37 g. The name and address of every holder of a recorded mortgage
38 on the premises.

39 *h. If fuel oil is used to heat the building and the landlord furnishes*
40 *the heat in the building, the name and address of the fuel oil dealer*
41 *servicing the building and the grade of fuel oil used.*

42 Every landlord hereby required to file a registration statement as
43 described in this section hereinabove shall file an amended registra-
44 tion statement within 7 days after any change in the foregoing in-
45 formation required to be included thereon.

1 ***[10.]*** *9.* This act shall take effect immediately.

ASSEMBLY, No. 627

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1980

By Assemblyman BAER

Referred to Committee on Commerce, Industry and Professions

AN ACT to allow certain public officers to secure fuel oil for tenants where a landlord of a residential rental property fails to supply heat in certain cases and to provide for payment thereof by the municipality and reimbursement therefor by the landlord, and to provide penalties for violations of this act.

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

1 1. This act shall be known and may be cited as "The Emergency
2 Fuel Oil Delivery Act."

1 2. Upon receipt of any tenant's oral or written complaint of the
2 lack of heat in his unit of dwelling space in the residential rental
3 property in which he lives and in which the landlord has agreed
4 to supply the heat, a local health officer or other designated
5 municipal officer shall immediately determine by inspection or
6 otherwise whether the lack of heat is the result of an insufficiency
7 of fuel oil for the heating system in the property. The officer may,
8 at the request of the tenant, enter and inspect, without notice to
9 the landlord, the property to determine if there is a lack of heat
10 in the residential rental property and the reason therefor. Lack of
11 heat means maintaining less heat than required by R. S. 26:3-31.

1 3. If the officer reasonably determines that there is a lack of
2 heat and that a reason for such is an insufficiency of fuel oil, he
3 shall make a reasonable effort to notify the landlord or his agent
4 of the insufficiency of fuel oil. The landlord or his agent shall
5 secure an adequate supply of heating oil and furnish the units of
6 dwelling space in the property with heat within 6 hours of the
7 initial complaint by the tenant.

1 4. If the officer fails in his effort to notify the landlord or his
2 agent or if the landlord fails to secure an adequate supply of fuel
3 oil and furnish the units of dwelling space with heat within 6 hours
4 of the initial complaint by the tenant, the officer shall contract with

5 a local fuel oil dealer for the delivery of an adequate amount of
6 fuel oil.

1 5. The municipality in which the rental property is located shall
2 issue a voucher to the fuel oil dealer with whom the contract was
3 made for the money amount due on the fuel oil delivered and the
4 service charge for refiring the burner, if any. The voucher shall
5 be paid in the manner provided for the approval and payment of
6 claims pursuant to N. J. S. 40A:5-17.

1 6. Any landlord or his agent who violates any of the provisions
2 of this act shall be liable to a civil penalty of not more than \$300.00
3 per unit of living space which lacked heat in the property. Such
4 penalty shall be recoverable by the municipality in a civil action by
5 a summary proceeding under the "Penalty Enforcement Law"
6 (N. J. S. 2A:58-1 et seq.). The penalty shall be payable to the
7 municipal clerk for deposit in the municipal treasury.

1 7. In addition, the landlord shall be liable to the municipality for
2 damages in a civil action for the cost of the fuel oil purchased and
3 any service charge for refiring the burner, for reasonable attorney's
4 fees and costs, and for other costs incurred by the municipality in
5 the enforcement of this act. Any landlord who prevails in a civil
6 action for damages shall be reimbursed by the municipality for
7 reasonable attorney's fees and costs. However, the landlord shall
8 remain liable for the cost of any fuel oil and service charge for
9 refiring the burner provided by the municipality under the pro-
10 visions of this act. As an alternative to the use of the "Penalty
11 Enforcement Law" as provided in section 6 and to the suit for civil
12 damages provided in this section, the municipality may secure a
13 lien against the rents as when the landlord is also the owner,
14 against the property. The officer shall certify the cost of the fuel
15 oil purchased and the service charge for refiring the burner, if any,
16 and any other costs incurred by the municipality in the enforce-
17 ment of this act to the governing body of the municipality, which
18 shall examine the certificate, and if found correct shall cause the
19 cost as shown thereon to be charged against the residential rental
20 property; the amount so charged shall forthwith become a lien
21 upon the future rents which rents shall be collectible by the muni-
22 cipality or its agent, or at the discussion of the municipality shall
23 instead become a lien upon such property and shall be added to
24 and become and form part of the taxes next to be assessed and
25 levied upon such property, the same to bear interest at the same
26 rate as taxes, and shall be collected and enforced by the same
27 officers and in the same manner as taxes.

1 8. This act shall take effect immediately.

STATEMENT

This bill provides that if a landlord who furnishes heat to his tenants fails to provide fuel oil for his apartment building, a local health officer after determining the lack of heat and an insufficiency of oil would notify the landlord of such and the landlord would be required to furnish the oil within 6 hours of the tenant's initial complaint. If the officer is unable to contact the landlord or the landlord fails to have the oil delivered, the officer would then contract for the delivery of an adequate supply of oil to the property. Under such circumstances, the municipality would pay the dealer for the fuel oil and the landlord would be liable for the cost of the fuel and subject to a suit for damages or a lien on the future rents and the property.

Any landlord who violates the provisions of this bill would be liable to a fine of not more than \$300.00 per unit of living space which lacked heat in the property.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 627

STATE OF NEW JERSEY

DATED: MAY 19, 1980

This Assembly Committee Substitute is permissive and provides that if a landlord fails to provide fuel oil for his apartment building, a local health officer may act as an agent of the landlord to secure fuel oil to restore the heat in the building. The local health officer may only act if he is so authorized by the governing body of the municipality, a certain amount of time has elapsed after the complaint has been lodged by the tenant, and a bona fide attempt has been made to notify the landlord of the lack of heat and the landlord has failed to take appropriate action. A landlord whose negligence or failure to act results in the institution of these provisions would be subject to a civil penalty of not more than \$300.00 for each affected dwelling unit in the building. This penalty would be payable to the municipality. If a municipality pays for the fuel oil in such a case, it could seek reimbursement out of all sums due as present or future rents.

Section 6 provides that any increase in expenditures that a municipality would incur in implementing the provisions of this bill is exempt from the "caps" law. Section 7 is an immunity provision to protect municipal officials, officers and employees from liability in implementing the provisions of this bill.

Section 9 of the bill amends a law which requires a landlord to file a registration statement with the clerk in the municipality in which his building is located. This amendment provides that every landlord who furnishes the heat and uses fuel oil in his apartment building would be required to list in the statement the name and address of the fuel oil dealer servicing his building and the grade of fuel oil used. This information will assist a municipality in carrying out the provisions of this bill.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 627

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 1980

This legislation is permissive and provides that if a landlord fails to provide fuel oil for his apartment building, a local health officer may act as an agent of the landlord to secure fuel oil to restore the heat in the building. The local health officer may only act if he is so authorized by the governing body of the municipality, a certain amount of time has elapsed after the complaint has been lodged by the tenant, and a bona fide attempt has been made to notify the landlord of the lack of heat and the landlord has failed to take appropriate action. A landlord whose negligence or failure to act results in the institution of these provisions would be subject to a civil penalty of not more than \$300.00 for each affected dwelling unit in the building. This penalty would be payable to the municipality. If a municipality pays for the fuel oil in such a case, it could seek reimbursement out of all sums due as present or future rents.

Section 6 is an immunity provision to protect municipal officials, officers and employees from liability in implementing the provisions of this bill.

Section 8 of the bill amends a law which requires a landlord to file a registration statement with the clerk in the municipality in which his building is located. This amendment provides that every landlord who furnishes the heat and uses fuel oil in his apartment building would be required to list in the statement the name and address of fuel oil dealer servicing his building and the grade of fuel oil used. This information will assist a municipality in carrying out the provisions of this bill.

The Senate committee notes that the original section 6, providing for a "caps" exemption for any increase in expenditures a municipality would incur in implementing the legislation, was struck from the bill by Assembly floor amendment.

The Senate committee amendments are designed to clarify certain vague provisions of the bill. It was unclear to the committee how a local officer was to obtain authorization to act from the municipal governing body. The original bill could well have been construed to require a meeting of the governing body each time the officer seeks to act under the bill. This would be ridiculous, and in effect nullify the rational basis for an "emergency" program of this type.

The Senate committee amendments provide, as the committee has provided before with respect to various programs, for the adoption of a general authorizing ordinance by the governing body, setting forth the conditions and circumstances under which action could be taken, and designating the officer who is to take such action. The governing body of the municipality would be concerned with the general policy question of whether or not it wishes to have such a program and which municipal department or officer is to implement the program. The governing body should not be burdened with the actual day-to-day decisions of implementation.

As received by the committee, the bill would not apply to owner-occupied two and three unit residential rental properties. The committee amended the bill to except owner-occupied residential rental properties of 5 or fewer units.

The remaining committee amendments are clarifying in nature.

The Senate committee noted that the municipal officer may cause fuel oil to be delivered, or refire a burner, to restore heat. He would not be able to make mechanical repairs under this act. The municipality has that power under the "repair and lien statutes" of the State (P. L. 1962, c. 66; C. 40:48-2.12f). This act is not intended to be in derogation of the powers provided under those statutes.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

DECEMBER 18, 1980

PAT SWEENEY

Governor Brendan Byrne today, in a public ceremony in his office, signed the following bills:

A-546, sponsored by Assemblyman Anthony M. Villane, Jr. (R-Monmouth), which will establish the offense of hazing. The bill defines hazing as a disorderly persons offense if, in connection with a student organization, an individual promotes, facilitates or engages in a method of initiation which is likely to subject an applicant to a substantial risk of bodily injury. The bill further establishes hazing as a fourth degree crime if it causes serious bodily injury to the victim.

A-627, sponsored by Assemblyman Byron M. Baer (D-Bergen), which is known as "The Emergency Fuel Bill Delivery Act." It is designed to enable municipalities to provide fuel in apartment dwellings when landlords fail to do so.

The act permits municipalities to engage a fuel oil dealer to restore proper heating of a residential rental property. In order to do so, the following must be met:

- The delivery of fuel or refiring of the burner must be "necessary to protect the health and safety of the residential tenants";
- A bona fide attempt must have been made by the tenant or his representative to notify the landlord of the lack of heat;
- If the outside temperature is between 33° and 55°F, at least 12 hours must have elapsed since the tenant lodged his complaint with the municipality, or if the outside temperature is 32°F or less, then at least four hours must have elapsed;
- The landlord fails to take appropriate action to provide heat.

Owner occupied residential properties of five units or less are exempt from the Act.

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Where a municipality has caused fuel oil to be delivered or the burner rekindled, the landlord can be held liable for a penalty up to \$300 for the affected dwelling unit. The cost of the fuel oil or the refiring of the burner can be billed to the landlord by the fuel oil dealer or the municipality can pay the charge.

In any action to enforce the penalty the municipality is to be reimbursed for its actual costs in having the fuel delivered and the burner refired plus reasonable attorney's fees and costs. The courts are empowered to order payment of the costs due the municipality from the goods and chattels of the landlord or from present and future rents.

The liability of a municipality acting pursuant to this act was limited to gross negligence and malfeasance.

A-1549, sponsored by Assemblyman John O. Bennett (R-Monmouth), which will make energy saving improvements, particularly solar heating and cooling system improvements, eligible for loan financing from the New Jersey Mortgage Finance (MFA). The MFA has already established an energy conservation pilot program.

Prior to the signing of this bill, the MFA had to direct its programs to persons and families of low and moderate income. The energy saving improvements program authorized by this legislation is exempted from such direction, making funds for these purposes available to any person desiring to install such improvements

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