

# 52:27D-134

## LEGISLATIVE HISTORY CHECK

Compiled by the NJ State Law Library

**LAWS OF:** 1999                      **CHAPTER:** 401

**NJSA:** 52:27D-134      (Fire code violations)

**BILL NO:** S1751              (Substituted for A3634)

**SPONSOR(S):** Rice and James

**DATE INTRODUCED:** March 15, 1999

**COMMITTEE:**              **ASSEMBLY:** Local Government and Housing

**SENATE:** Community and Urban Affairs

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**              **ASSEMBLY:** January 10, 2000

**SENATE:** January 10, 2000

**DATE OF APPROVAL:** January 18, 2000

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#): 2<sup>nd</sup> Reprint  
(Amendments during passage denoted by superscript number)

### S1751

[SPONSORS STATEMENT](#): (Begins on page 5 of original bill)              [Yes](#)

**COMMITTEE STATEMENT:**                              [ASSEMBLY:](#)              [Yes](#)

[SENATE:](#)              [Yes](#)

**FLOOR AMENDMENT STATEMENTS:**              No

**LEGISLATIVE FISCAL ESTIMATE:**              No

### A3634

[SPONSORS STATEMENT](#): (Begins on page 5 of original bill)              [Yes](#)

**COMMITTEE STATEMENT:**                              **ASSEMBLY:**              No

**SENATE:**              No

**FLOOR AMENDMENT STATEMENTS:**              No

**LEGISLATIVE FISCAL ESTIMATE:**              No

**VETO MESSAGE:**              No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**              No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or [refdesk@njstatelib.org](mailto:refdesk@njstatelib.org)

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 1999, CHAPTER 401, *approved January 18, 2000*  
Senate, No. 1751 (*Second Reprint*)

1 AN ACT concerning the assessment of penalties for certain unabated  
2 construction code and fire code violations, amending <sup>2</sup>[and  
3 supplementing]<sup>2</sup> P.L.1975, c.217 and <sup>2</sup>[amending and  
4 supplementing]<sup>2</sup> P.L.1983. c.383.

5

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

8

9 1. Section 16 of P.L.1975, c.217 (C.52:27D-134) is amended to  
10 read as follows:

11 16. ~~Neither an~~ a. An appeal to a county, municipal or joint  
12 construction board of appeals ~~nor~~ , a departmental appeal ~~nor~~ ,  
13 or an appeal to a court of competent jurisdiction shall not  
14 automatically stay any order to stop construction issued pursuant to  
15 this act or prevent the seeking of an order in a court of competent  
16 jurisdiction to enjoin the violation of a stop construction order.

17 b. <sup>2</sup>[An] Upon the 121st day subsequent to its filing, an<sup>2</sup> appeal  
18 to a county, municipal or joint construction board of appeals, a  
19 departmental appeal, or an appeal to a court of competent jurisdiction  
20 shall not automatically stay any order, including orders to pay a  
21 penalty imposed pursuant to section 20 of P.L.1975, c.217  
22 (C.52:27D-138) or <sup>1</sup>[to]<sup>1</sup> prevent the seeking of an order in a court  
23 of competent jurisdiction to enjoin the violation of any order of an  
24 enforcing agency, in connection with any property <sup>1</sup>[which is the  
25 subject of a declaration by a municipality] which is <sup>2</sup>[found]  
26 certified<sup>2</sup> by <sup>2</sup>[the construction] a<sup>2</sup> code <sup>2</sup>enforcement<sup>2</sup> official to  
27 be unoccupied<sup>1</sup> <sup>2</sup>[pursuant to section] <sup>2</sup> [2]<sup>1</sup>  
28 <sup>2</sup>[3<sup>1</sup> of P.L. , c. (C ) (pending before the Legislature as this  
29 bill)]<sup>2</sup> . <sup>2</sup>For the purposes of this section, a building may not be  
30 certified as unoccupied unless it has been unoccupied for a period of  
31 not less than six months.

32 Any party filing an appeal with a court of competent jurisdiction  
33 regarding violations assessed against property which has been certified  
34 as unoccupied pursuant to this section shall file a motion upon the  
35 initiation of the appeal requesting expedited consideration of the appeal  
36 on the ground that acceleration is warranted because the subject of the  
37 appeal involves matters of public safety. In the event the appeal is  
38 granted, the court shall grant the motion to expedite.<sup>2</sup>

39 (cf: P.L.1975, c.217, s.16)

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:

<sup>1</sup> Senate SCU committee amendments adopted September 27, 1999.

<sup>2</sup> Assembly ALH committee amendments adopted December 2, 1999.

1       2. Section 19 of P.L.1983, c.383 (C.52:27D-210) is amended to  
2 read as follows:

3       19. a. No person shall:

4           (1) Obstruct, hinder, delay or interfere by force or otherwise with  
5 the commissioner or any local enforcing agency in the exercise of any  
6 power or the discharge of any function or duty under the provisions of  
7 this act;

8           (2) Prepare, utter or render any false statement, report, document,  
9 plans or specification permitted or required under the provisions of  
10 this act;

11          (3) Render ineffective or inoperative, or fail to properly maintain,  
12 any protective equipment or system installed, or intended to be  
13 installed, in a building or structure;

14          (4) Refuse or fail to comply with a lawful ruling, action, order or  
15 notice of the commissioner or a local enforcing agency; or

16          (5) Violate, or cause to be violated, any of the provisions of this  
17 act.

18       b. (1) A person who violates or causes to be violated a provision of  
19 subsection a. of this section shall be liable to a penalty of not more  
20 than \$5,000 for each violation. If a violation of subsection a. of this  
21 section is of a continuing nature, each day during which the violation  
22 remains unabated after the date fixed in an order or notice for the  
23 correction or termination of the continuing violation shall constitute  
24 an additional and separate violation, except while an appeal from the  
25 order is pending in connection with any property except for those  
26 properties which are <sup>1</sup> [the subject of a declaration by a municipality]  
27 <sup>2</sup> [found] certified<sup>2</sup> by the fire code official to be unoccupied<sup>1</sup>  
28 <sup>2</sup> [pursuant to section 4 of P.L. , c. (C. ) (now pending before the  
29 Legislature as this bill]<sup>2</sup> . <sup>2</sup> For the purposes of this section, a building  
30 may not be certified to be unoccupied unless it has been unoccupied  
31 for a period of not less than six months.<sup>2</sup>

32           (2) If an owner has been given notice of the existence of a violation  
33 of the act and fails to abate the violation, he shall be liable to an  
34 additional penalty of not more than \$50,000. If a violation is of a  
35 continuing nature, each day during which the violation remains  
36 unabated shall not constitute an additional and separate violation for  
37 the purposes of the penalty in this paragraph.

38           (3) An additional \$150,000 or the actual cost, whichever is greater,  
39 may be imposed as a penalty for the expense to the municipality or fire  
40 district of suppressing any fire, directly or indirectly, resulting from the  
41 unabated violation and for any other actual expenses, including  
42 attorney fees, incurred by the municipality for the enforcement of the  
43 violation.

44           (4) <sup>2</sup> [An] Upon the 121st day subsequent to its filing, an<sup>2</sup> appeal  
45 to a county, municipal or joint construction board of appeals, a  
46 departmental appeal, or an appeal to a court of competent jurisdiction  
47 shall not automatically stay any order, including orders to pay a

1 penalty imposed pursuant to P.L.1983, c.393 (C.52:27D-192 et seq.),  
2 or prevent the seeking of an order in a court of competent jurisdiction  
3 to enjoin the violation of any order of an enforcing agency in  
4 connection with any property <sup>2</sup> [which is] <sup>2</sup> [the subject of a  
5 declaration by a municipality]  which is found by the fire code official  
6 to be unoccupied<sup>1</sup> <sup>2</sup> [pursuant to section 4 of P.L. , c. (C. )](now  
7 pending before the Legislature as this bill]<sup>2</sup> .

8 <sup>2</sup>Any party filing an appeal with a court of competent jurisdiction  
9 regarding violations assessed against property which has been certified  
10 as unoccupied pursuant to this section shall file a motion upon the  
11 initiation of the appeal requesting expedited consideration of the appeal  
12 on the ground that acceleration is warranted because the subject of the  
13 appeal involves matters of public safety. In the event the appeal is  
14 granted, the court shall grant the motion to expedite.<sup>2</sup>

15 c. The commissioner or a local enforcing agency may levy and  
16 collect penalties in the amounts set forth in this section, but not in  
17 excess of the maximum amounts that the commissioner shall establish  
18 by regulation for different types of violations. If the administrative  
19 penalty order has not been satisfied by the 30th day after its issuance,  
20 the penalty may be sued for, and recovered by and in the name of the  
21 commissioner or the enforcing agency, as the case may be, in a civil  
22 action by a summary proceeding under "the penalty enforcement law"  
23 (N.J.S.2A:58-1 et seq.) in the Superior Court or municipal court. All  
24 moneys recovered in the form of penalties by a municipality shall be  
25 paid into the treasury of the municipality and shall be appropriated for  
26 the enforcement of the act; except that the additional penalty paid by  
27 an owner to a municipality under paragraphs (2) or (3) of subsection  
28 b. of this section shall be placed in a special municipal trust fund to be  
29 applied to the municipality's or fire district's cost of firefighter training  
30 and new equipment. A person who fails to pay immediately a money  
31 judgment rendered against him pursuant to this subsection may be  
32 sentenced to imprisonment by the court for a period not exceeding six  
33 months, unless the judgment is sooner paid.

34 d. A person shall be deemed to have violated or caused to have  
35 violated a provision of subsection a. of this section if an officer, agent  
36 or employee under his control and with his knowledge has violated or  
37 caused to have violated any of the provisions of subsection a. of this  
38 section.

39 e. Upon request of the owner or purchaser of a building or  
40 structure, the enforcing agency having jurisdiction over the building or  
41 structure shall issue a certificate either enumerating the violations  
42 indicated by its records to be unabated and the penalties or fees  
43 indicated to be unpaid, or stating that its records indicate that no  
44 violations remain unabated and no penalties or fees remain unpaid.

45 f. A person who purchases a property without having obtained a  
46 certificate stating that there are no unabated violations of record and  
47 no unpaid fees or penalties shall be deemed to have notice of all

1 violations of record and shall be liable for the payment of all unpaid  
2 fees or penalties.

3 (cf: P.L.1991, c.489, s.1)

4

5 <sup>2</sup>[3. (New section) <sup>1</sup>【The governing body of a municipality may  
6 adopt an ordinance declaring a <sup>1</sup>A <sup>1</sup>building or buildings <sup>1</sup>found by the  
7 construction code official<sup>1</sup> to be unoccupied <sup>1</sup>【or abandoned and】  
8 shall be<sup>1</sup> subject to the payment of a penalty imposed pursuant to  
9 section 20 of P.L.1975, c.217 (C.52:27D-138), notwithstanding the  
10 pendency of an appeal to a county, municipality or joint construction  
11 board of appeals, a departmental appeal or an appeal to a court of  
12 competent jurisdiction. For the purposes of this section, a building  
13 may not be declared to be unoccupied unless it has been unoccupied  
14 for a period of not less than six months.】<sup>2</sup>

15

16 <sup>2</sup>[4. (New section) <sup>1</sup>【The governing body of a municipality may  
17 adopt an ordinance declaring a <sup>1</sup>A <sup>1</sup>building or buildings <sup>1</sup>found by the  
18 fire code official<sup>1</sup> to be unoccupied <sup>1</sup>【or abandoned and】 shall be<sup>1</sup>  
19 subject to the payment of a penalty imposed pursuant to P.L.1983,  
20 c.383 (C.52:27D-192 et seq.), notwithstanding the pendency of an  
21 appeal to a county, municipality or joint construction board of appeals,  
22 a departmental appeal or an appeal to a court of competent  
23 jurisdiction. For the purposes of this section, a building may not be  
24 declared as unoccupied unless it has been unoccupied for a period of  
25 not less than six months.】<sup>2</sup>

26

27 <sup>2</sup>[5.] 3.<sup>2</sup> This act shall take effect immediately.

28

29

30

31

32 Clarifies assessment of penalties for construction, fire code violations  
33 during periods of appeal.

**SENATE, No. 1751**

---

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

---

INTRODUCED MARCH 15, 1999

**Sponsored by:**  
**Senator RONALD L. RICE**  
**District 28 (Essex)**

**SYNOPSIS**

Clarifies assessment of penalties for construction, fire code violations during periods of appeal.

**CURRENT VERSION OF TEXT**

As introduced.



S1751 RICE

2

1 AN ACT concerning the assessment of penalties for certain unabated  
2 construction code and fire code violations, amending and  
3 supplementing P.L.1975, c.217 and amending and supplementing  
4 P.L.1983, c.383.

5

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

8

9 1. Section 16 of P.L.1975, c.217 (C.52:27D-134) is amended to  
10 read as follows:

11 16. **[Neither an]** a. An appeal to a county, municipal or joint  
12 construction board of appeals **[nor]** a departmental appeal **[nor]**  
13 or an appeal to a court of competent jurisdiction shall not  
14 automatically stay any order to stop construction issued pursuant to  
15 this act or prevent the seeking of an order in a court of competent  
16 jurisdiction to enjoin the violation of a stop construction order.

17 b. An appeal to a county, municipal or joint construction board of  
18 appeals, a departmental appeal, or an appeal to a court of competent  
19 jurisdiction shall not automatically stay any order, including orders to  
20 pay a penalty imposed pursuant to section 20 of P.L.1975, c.217  
21 (C.52:27D-138) or to prevent the seeking of an order in a court of  
22 competent jurisdiction to enjoin the violation of any order of an  
23 enforcing agency, in connection with any property which is the subject  
24 of a declaration by a municipality pursuant to section 2  
25 of P.L. , c. (C ) (pending before the Legislature as this bill).  
26 (cf: P.L.1975, c.217, s.16)

27

28 2. Section 19 of P.L.1983, c.383 (C.52:27D-210) is amended to  
29 read as follows:

30 19. a. No person shall:

31 (1) Obstruct, hinder, delay or interfere by force or otherwise with  
32 the commissioner or any local enforcing agency in the exercise of any  
33 power or the discharge of any function or duty under the provisions of  
34 this act;

35 (2) Prepare, utter or render any false statement, report, document,  
36 plans or specification permitted or required under the provisions of  
37 this act;

38 (3) Render ineffective or inoperative, or fail to properly maintain,  
39 any protective equipment or system installed, or intended to be  
40 installed, in a building or structure;

41 (4) Refuse or fail to comply with a lawful ruling, action, order or  
42 notice of the commissioner or a local enforcing agency; or

**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.**



**S1751 RICE**

1 (5) Violate, or cause to be violated, any of the provisions of this  
2 act.

3 b. (1) A person who violates or causes to be violated a provision of  
4 subsection a. of this section shall be liable to a penalty of not more  
5 than \$5,000 for each violation. If a violation of subsection a. of this  
6 section is of a continuing nature, each day during which the violation  
7 remains unabated after the date fixed in an order or notice for the  
8 correction or termination of the continuing violation shall constitute  
9 an additional and separate violation, except while an appeal from the  
10 order is pending in connection with any property except for those  
11 properties which are the subject of a declaration by a municipality  
12 pursuant to section 4 of P.L. , c. (C. )(now pending before the  
13 Legislature as this bill.

14 (2) If an owner has been given notice of the existence of a  
15 violation of the act and fails to abate the violation, he shall be liable to  
16 an additional penalty of not more than \$50,000. If a violation is of a  
17 continuing nature, each day during which the violation remains  
18 unabated shall not constitute an additional and separate violation for  
19 the purposes of the penalty in this paragraph.

20 (3) An additional \$150,000 or the actual cost, whichever is  
21 greater, may be imposed as a penalty for the expense to the  
22 municipality or fire district of suppressing any fire, directly or  
23 indirectly, resulting from the unabated violation and for any other  
24 actual expenses, including attorney fees, incurred by the municipality  
25 for the enforcement of the violation.

26 (4) An appeal to a county, municipal or joint construction board of  
27 appeals, a departmental appeal, or an appeal to a court of competent  
28 jurisdiction shall not automatically stay any order, including orders to  
29 pay a penalty imposed pursuant to P.L.1983, c.393 (C.52:27D-192 et  
30 seq.), or prevent the seeking of an order in a court of competent  
31 jurisdiction to enjoin the violation of any order of an enforcing agency  
32 in connection with any property which is the subject of a declaration  
33 by a municipality pursuant to section 4 of P.L. , c. (C. )(now  
34 pending before the Legislature as this bill.

35 c. The commissioner or a local enforcing agency may levy and  
36 collect penalties in the amounts set forth in this section, but not in  
37 excess of the maximum amounts that the commissioner shall establish  
38 by regulation for different types of violations. If the administrative  
39 penalty order has not been satisfied by the 30th day after its issuance,  
40 the penalty may be sued for, and recovered by and in the name of the  
41 commissioner or the enforcing agency, as the case may be, in a civil  
42 action by a summary proceeding under "the penalty enforcement law"  
43 (N.J.S.2A:58-1 et seq.) in the Superior Court or municipal court. All  
44 moneys recovered in the form of penalties by a municipality shall be  
45 paid into the treasury of the municipality and shall be appropriated for  
46 the enforcement of the act; except that the additional penalty paid by

**S1751 RICE**

1 an owner to a municipality under paragraphs (2) or (3) of subsection  
2 b. of this section shall be placed in a special municipal trust fund to be  
3 applied to the municipality's or fire district's cost of firefighter training  
4 and new equipment. A person who fails to pay immediately a money  
5 judgment rendered against him pursuant to this subsection may be  
6 sentenced to imprisonment by the court for a period not exceeding six  
7 months, unless the judgment is sooner paid.

8 d. A person shall be deemed to have violated or caused to have  
9 violated a provision of subsection a. of this section if an officer, agent  
10 or employee under his control and with his knowledge has violated or  
11 caused to have violated any of the provisions of subsection a. of this  
12 section.

13 e. Upon request of the owner or purchaser of a building or  
14 structure, the enforcing agency having jurisdiction over the building or  
15 structure shall issue a certificate either enumerating the violations  
16 indicated by its records to be unabated and the penalties or fees  
17 indicated to be unpaid, or stating that its records indicate that no  
18 violations remain unabated and no penalties or fees remain unpaid.

19 f. A person who purchases a property without having obtained a  
20 certificate stating that there are no unabated violations of record and  
21 no unpaid fees or penalties shall be deemed to have notice of all  
22 violations of record and shall be liable for the payment of all unpaid  
23 fees or penalties.

24 (cf: P.L.1991, c.489, s.1)

25

26 3. (New section) The governing body of a municipality may adopt  
27 an ordinance declaring a building or buildings to be unoccupied or  
28 abandoned and subject to the payment of a penalty imposed pursuant  
29 to section 20 of P.L.1975, c.217 (C.52:27D-138), notwithstanding the  
30 pendency of an appeal to a county, municipality or joint construction  
31 board of appeals, a departmental appeal or an appeal to a court of  
32 competent jurisdiction. For the purposes of this section, a building  
33 may not be declared to be unoccupied unless it has been unoccupied  
34 for a period of not less than six months.

35

36 4. (New section) The governing body of a municipality may adopt  
37 an ordinance declaring a building or buildings to be unoccupied or  
38 abandoned and subject to the payment of a penalty imposed pursuant  
39 to P.L.1983, c. 383 (C.52:27D-192 et seq.), notwithstanding the  
40 pendency of an appeal to a county, municipality or joint construction  
41 board of appeals, a departmental appeal or an appeal to a court of  
42 competent jurisdiction. For the purposes of this section, a building  
43 may not be declared as unoccupied unless it has been unoccupied for  
44 a period of not less than six months.

45

46 5. This act shall take effect immediately.

1 STATEMENT

2

3 This bill would permit the continuing assessment of a fine for an  
4 unabated construction code or fire code violation in connection with  
5 abandoned or unoccupied structures, even after the property owner  
6 has filed an appeal. Penalties would be frozen for other owners during  
7 an appeal.

8 Under the "State Uniform Construction Code Act" P.L.1975, c.217  
9 (C.52:27D-134 et seq.) and the "Uniform Fire Safety Act," P.L.1983,  
10 c. 383 (C.52:27D-119 et seq.) property owners may be fined for  
11 violations. The penalties continue and increase each day the violation  
12 is uncorrected. The only exception is that during an appeal, the  
13 penalties are frozen. Consequently, a property owner can postpone  
14 correcting any outstanding violation without any penalty by simply  
15 filing an appeal.

16 The bill allows municipalities to adopt an ordinance declaring a  
17 building or buildings to be unoccupied or abandoned and subject to the  
18 payment of a penalty issued for a violation of either code,  
19 notwithstanding the pendency of an appeal to a county, municipality  
20 or joint construction board of appeals, a departmental appeal or an  
21 appeal to a court of competent jurisdiction. Other owners would have  
22 their penalties frozen while an appeal is pending.

ASSEMBLY LOCAL GOVERNMENT AND HOUSING  
COMMITTEE

STATEMENT TO

[First Reprint]

**SENATE, No. 1751**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 2, 1999

The Assembly Local Government and Housing Committee reports favorably Senate Bill No. 1751 (1R) with committee amendments.

Senate Bill No. 1751 (1R), as amended, would limit the automatic stay provisions of an appeal, and permit the continuing assessment of a fine for an unabated fire code violation in connection with an unoccupied structure. Upon the 121st day following the filing of an appeal concerning violations for unoccupied structures, any automatic stay of collection and enforcement procedures would end, allowing those procedures to move forward in the courts. The bill requires that appeals filed with the courts concerning unoccupied building code violations be processed on an expedited basis.

Under the "State Uniform Construction Code Act" P.L.1975, c.217 (C.52:27D-119 et seq.) and the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.), property owners may be fined for violations of the State Uniform Construction Code or the Uniform Fire Code concerning the buildings they own. Continuing violations may be assessed for certain violations that remain uncorrected. The continuing assessment of penalties is specifically prohibited under the "Uniform Fire Safety Act," upon an appeal being filed. In addition, the filing of an appeal generally will operate to stay enforcement and collection activities on previously assessed violations during the pendency of the appeal. Current law, therefore, permits property owners to significantly delay the correction of outstanding violations by simply filing appeals. Unoccupied buildings which have been cited for code violations may pose significant public safety risks if allowed to deteriorate during a lingering appeal process.

The bill, as amended, would limit the amount of delay in addressing building code violations in two ways. First, the bill allows for the continued assessment of any penalty imposed under the "Uniform Fire Safety Act," with respect to a building which has been certified by a fire code official to be unoccupied. In addition, the bill amends the "Uniform Fire Safety Act," and the "State Uniform Construction Code

Act" to specify that the filing of an appeal will only operate as a stay of enforcement or collection procedures for a period of 120 days, in the event the violations concern a building which has been certified as vacant by a code enforcement official.

The committee amended the bill to insert a grace period of 120 days during which the filing of an appeal could operate to stay enforcement and collection proceedings. In addition, appeals filed with courts of competent jurisdiction concerning code violations in unoccupied buildings would be required to be handled on an expedited basis. The committee amendments clarify that only the fire code provisions concerning continuing assessment of penalties during appeal are being amended. The "State Uniform Construction Code Act" currently permits the continuing assessment of penalties for ongoing violations.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1751**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 27, 1999

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 1751.

Senate Bill No. 1751, as amended by the committee, would permit the continuing assessment of a fine for an unabated construction code or fire code violation in connection with unoccupied structures, even after the property owner has filed an appeal. Penalties would be frozen for other owners during an appeal.

Under the "State Uniform Construction Code Act" P.L.1975, c.217 (C.52:27D-119 et seq.) and the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) property owners may be fined for violations. The penalties continue and increase each day the violation is uncorrected. The only exception is that during an appeal, the penalties are frozen. Consequently, a property owner can postpone correcting any outstanding violation without any penalty by simply filing an appeal.

The bill allows for the continued assessment of any penalty imposed either under section 20 of P.L.1975, c.217 (C.52:27D-138) or P.L.1983, c.383 (C.52:27D-192 et seq.) for the violation thereof with respect to a building which has been found by a construction code official or fire code official to be unoccupied, notwithstanding the pendency of an appeal to a county, municipality or joint construction board of appeals, a departmental appeal or an appeal to a court of competent jurisdiction. Other owners would have their penalties frozen while an appeal is pending.

The committee amended the bill to remove the provision that would have required the municipal governing body to adopt an ordinance declaring a building to be unoccupied as a precondition for the continued assessment of the penalty during the pendency of the appeal. In addition, the amendments remove the reference to abandonment and instead limit the buildings covered by the bill's provisions to those that are unoccupied. The amendments also correct a grammatical error in section 1 of the bill in order to avoid confusion and correct an internal reference to the new language being inserted into the "New Jersey Uniform Construction Code Act."

# ASSEMBLY, No. 3634

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 6, 2000

**Sponsored by:**

**Assemblyman JERRY GREEN**

**District 17 (Middlesex, Somerset and Union)**

**Assemblyman KENNETH C. LEFEVRE**

**District 2 (Atlantic)**

**Co-Sponsored by:**

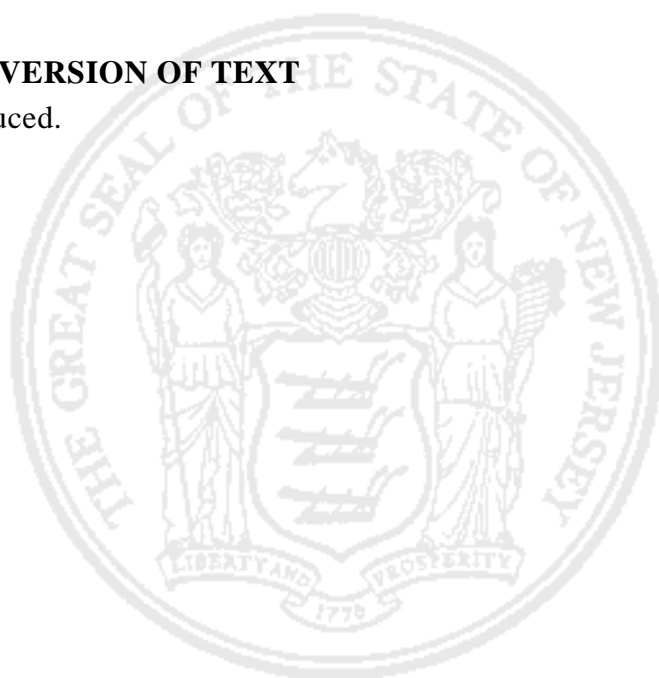
**Assemblyman B. Smith, Assemblywoman Pou, Assemblyman Barnes,  
Assemblywoman Buono, Assemblymen Payne, Conaway, Conners,  
Assemblywoman Cruz-Perez, Assemblyman Wisniewski,  
Assemblywoman Quigley, Assemblyman Doria, Assemblywoman  
Weinberg, Assemblymen Zisa and Roberts**

**SYNOPSIS**

Clarifies assessment of penalties for construction, fire code violations during periods of appeal.

**CURRENT VERSION OF TEXT**

As introduced.



A3634 GREEN, LEFEVRE

2

1 AN ACT concerning the assessment of penalties for certain unabated  
2 construction code and fire code violations, amending P.L.1975,  
3 c.217 and P.L.1983. c.383.

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

7  
8 1. Section 16 of P.L.1975, c.217 (C.52:27D-134) is amended to  
9 read as follows:

10 16. **Neither an** a. An appeal to a county, municipal or joint  
11 construction board of appeals **[nor]** , a departmental appeal **[nor]** ,  
12 or an appeal to a court of competent jurisdiction shall not  
13 automatically stay any order to stop construction issued pursuant to  
14 this act or prevent the seeking of an order in a court of competent  
15 jurisdiction to enjoin the violation of a stop construction order.

16 b. Upon the 121st day subsequent to its filing, an appeal to a  
17 county, municipal or joint construction board of appeals, a  
18 departmental appeal, or an appeal to a court of competent jurisdiction  
19 shall not automatically stay any order, including orders to pay a  
20 penalty imposed pursuant to section 20 of P.L.1975, c.217  
21 (C.52:27D-138) or prevent the seeking of an order in a court of  
22 competent jurisdiction to enjoin the violation of any order of an  
23 enforcing agency, in connection with any property which is certified  
24 by a code enforcement official to be unoccupied. For the purposes of  
25 this section, a building may not be certified as unoccupied unless it has  
26 been unoccupied for a period of not less than six months.

27 Any party filing an appeal with a court of competent jurisdiction  
28 regarding violations assessed against property which has been certified  
29 as unoccupied pursuant to this section shall file a motion upon the  
30 intiation of the appeal requesting expedited consideration of the appeal  
31 on the ground that acceleration is warranted because the subject of the  
32 appeal involves matters of public safety. In the event the appeal is  
33 granted, the court shall grant the motion to expedite.

34 (cf: P.L.1975, c.217, s.16)

35  
36 2. Section 19 of P.L.1983, c.383 (C.52:27D-210) is amended to  
37 read as follows:

38 19. a. No person shall:

39 (1) Obstruct, hinder, delay or interfere by force or otherwise with  
40 the commissioner or any local enforcing agency in the exercise of any  
41 power or the discharge of any function or duty under the provisions of  
42 this act;

43 (2) Prepare, utter or render any false statement, report, document,

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

**Matter underlined thus is new matter.**



1 plans or specification permitted or required under the provisions of  
2 this act;

3 (3) Render ineffective or inoperative, or fail to properly maintain,  
4 any protective equipment or system installed, or intended to be  
5 installed, in a building or structure;

6 (4) Refuse or fail to comply with a lawful ruling, action, order or  
7 notice of the commissioner or a local enforcing agency; or

8 (5) Violate, or cause to be violated, any of the provisions of this  
9 act.

10 b. (1) A person who violates or causes to be violated a provision of  
11 subsection a. of this section shall be liable to a penalty of not more  
12 than \$5,000 for each violation. If a violation of subsection a. of this  
13 section is of a continuing nature, each day during which the violation  
14 remains unabated after the date fixed in an order or notice for the  
15 correction or termination of the continuing violation shall constitute  
16 an additional and separate violation, except while an appeal from the  
17 order is pending in connection with any property except for those  
18 properties which are certified by the fire code official to be  
19 unoccupied. For the purposes of this section, a building may not be  
20 certified to be unoccupied unless it has been unoccupied for a period  
21 of not less than six months.

22 (2) If an owner has been given notice of the existence of a violation  
23 of the act and fails to abate the violation, he shall be liable to an  
24 additional penalty of not more than \$50,000. If a violation is of a  
25 continuing nature, each day during which the violation remains  
26 unabated shall not constitute an additional and separate violation for  
27 the purposes of the penalty in this paragraph.

28 (3) An additional \$150,000 or the actual cost, whichever is greater,  
29 may be imposed as a penalty for the expense to the municipality or fire  
30 district of suppressing any fire, directly or indirectly, resulting from the  
31 unabated violation and for any other actual expenses, including  
32 attorney fees, incurred by the municipality for the enforcement of the  
33 violation.

34 (4) Upon the 121st day subsequent to its filing, an appeal to a  
35 county, municipal or joint construction board of appeals, a  
36 departmental appeal, or an appeal to a court of competent jurisdiction  
37 shall not automatically stay any order, including orders to pay a  
38 penalty imposed pursuant to P.L.1983, c.393 (C.52:27D-192 et seq.),  
39 or prevent the seeking of an order in a court of competent jurisdiction  
40 to enjoin the violation of any order of an enforcing agency in  
41 connection with any property which is found by the fire code official  
42 to be unoccupied.

43 Any party filing an appeal with a court of competent jurisdiction  
44 regarding violations assessed against property which has been certified  
45 as unoccupied pursuant to this section shall file a motion upon the  
46 initiation of the appeal requesting expedited consideration of the appeal

1 on the ground that acceleration is warranted because the subject of the  
2 appeal involves matters of public safety. In the event the appeal is  
3 granted, the court shall grant the motion to expedite.

4 c. The commissioner or a local enforcing agency may levy and  
5 collect penalties in the amounts set forth in this section, but not in  
6 excess of the maximum amounts that the commissioner shall establish  
7 by regulation for different types of violations. If the administrative  
8 penalty order has not been satisfied by the 30th day after its issuance,  
9 the penalty may be sued for, and recovered by and in the name of the  
10 commissioner or the enforcing agency, as the case may be, in a civil  
11 action by a summary proceeding under "the penalty enforcement law"  
12 (N.J.S.2A:58-1 et seq.) in the Superior Court or municipal court. All  
13 moneys recovered in the form of penalties by a municipality shall be  
14 paid into the treasury of the municipality and shall be appropriated for  
15 the enforcement of the act; except that the additional penalty paid by  
16 an owner to a municipality under paragraphs (2) or (3) of subsection  
17 b. of this section shall be placed in a special municipal trust fund to be  
18 applied to the municipality's or fire district's cost of firefighter training  
19 and new equipment. A person who fails to pay immediately a money  
20 judgment rendered against him pursuant to this subsection may be  
21 sentenced to imprisonment by the court for a period not exceeding six  
22 months, unless the judgment is sooner paid.

23 d. A person shall be deemed to have violated or caused to have  
24 violated a provision of subsection a. of this section if an officer, agent  
25 or employee under his control and with his knowledge has violated or  
26 caused to have violated any of the provisions of subsection a. of this  
27 section.

28 e. Upon request of the owner or purchaser of a building or  
29 structure, the enforcing agency having jurisdiction over the building or  
30 structure shall issue a certificate either enumerating the violations  
31 indicated by its records to be unabated and the penalties or fees  
32 indicated to be unpaid, or stating that its records indicate that no  
33 violations remain unabated and no penalties or fees remain unpaid.

34 f. A person who purchases a property without having obtained a  
35 certificate stating that there are no unabated violations of record and  
36 no unpaid fees or penalties shall be deemed to have notice of all  
37 violations of record and shall be liable for the payment of all unpaid  
38 fees or penalties.

39 (cf: P.L.1991, c.489, s.1)

40  
41 3. This act shall take effect immediately.

STATEMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

This bill would limit the automatic stay provisions of an appeal, and permit the continuing assessment of a fine for an unabated fire code violation in connection with an unoccupied structure. Upon the 121st day following the filing of an appeal concerning violations for unoccupied structures, any automatic stay of collection and enforcement procedures would end, allowing those procedures to move forward in the courts. The bill requires that appeals filed with the courts concerning unoccupied building code violations be processed on an expedited basis.

Under the "State Uniform Construction Code Act" P.L.1975, c.217 (C.52:27D-119 et seq.) and the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.), property owners may be fined for violations of the State Uniform Construction Code or the Uniform Fire Code concerning the buildings they own. Continuing violations may be assessed for certain violations that remain uncorrected. The continuing assessment of penalties is specifically prohibited under the "Uniform Fire Safety Act," upon an appeal being filed. In addition, the filing of an appeal generally will operate to stay enforcement and collection activities on previously assessed violations during the pendency of the appeal. Current law, therefore, permits property owners to significantly delay the correction of outstanding violations by simply filing appeals. Unoccupied buildings which have been cited for code violations may pose significant public safety risks if allowed to deteriorate during a lingering appeal process.

The bill would limit the amount of delay in addressing building code violations in two ways. First, the bill allows for the continued assessment of any penalty imposed under the "Uniform Fire Safety Act," with respect to a building which has been certified by a fire code official to be unoccupied. In addition, the bill amends the "Uniform Fire Safety Act," and the "State Uniform Construction Code Act" to specify that the filing of an appeal will only operate as a stay of enforcement or collection procedures for a period of 120 days, in the event the violations concern a building which has been certified as vacant by a code enforcement official.