**Bill A1440/S1170**

**Session 2022 - 2023**

ASSEMBLY, No. 1440

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman JAMES J. KENNEDY/Senator JAMES BEACH, District 6 (Burlington/Camden)

District 22 (Middlesex, Somerset and Union)

SYNOPSIS (*Underlined, italicized text are amendments proposed by NJ 50 x 30 Building Electrification Team.)*

     Establishes “Zero Energy Construction Act”; requires all new residential and commercial developments to be zero energy ready; requires developers to offer zero energy construction. *Three years later requires all new residential and commercial developments to be zero energy building.*

CURRENT VERSION OF TEXT

     Introduced Pending Technical Review by Legislative Counsel.

An Act concerning zero energy construction, supplementing and amending P.L.1975, c.217, and amending P.L.2009, c.106.

     Be It Enacted by the Senate and General Assembly of the State of New Jersey:

     1.    P.L.    , c.    (C.        ) (pending before the Legislature as this bill) shall be known and may be cited as the “Zero Energy Construction Act.”

     2.    As used in P.L.    , c.    (C.        ) (pending before the Legislature as this bill):

     “Developer” means any person who constructs or offers to construct a new residential or commercial building.

     “Owner” means any person who acquires a legal or equitable interest in a new residential or commercial building.

     “Prospective owner” means any person who contemplates acquiring a legal or equitable interest in a new residential or commercial building.

     “Zero energy building” means an energy-efficient building where, on a source energy basis, the actual annual delivered energy is less than or equal to the on-site renewable exported energy.

     “Zero energy ready building” means a building that would be a zero energy building if equipped with a renewable energy system.

     3.    On and after January 1, 2025, an enforcing agency shall not issue a construction permit for a new residential or commercial building unless the permit requires the building to be constructed as a zero energy ready building. *This shall include an electrical system capable of supporting, at a minimum, electric cold climate heat pump for space and water heating, all-electric appliances, EV charging, and on-site solar or an alternative clean renewable energy source.*

     4.    a.  A developer of a building subject to the provisions of section 3 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill) shall offer to construct the building as a zero energy building when a prospective owner enters into negotiations with the developer to purchase a new building.

     b.    Prior to entering into a contract of sale for a building subject to the provisions of section 3 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill), a developer shall:

     (1)   disclose that a prospective owner may have the building be constructed as a zero energy building, and upon request by the prospective owner, disclose the total projected cost of constructing the building as such that will be charged to the owner by the developer; and

     (2)  unless construction of the building as a zero energy building is included in the sale of the building at no cost to the prospective

owner, inform the prospective owner of the availability on the Internet website of the Department of Community Affairs of general information on the environmental benefits of, and potential energy cost savings associated with, zero energy buildings, and any applicable credits, rebates, or other incentives that may be available to the prospective owner for purchasing a zero energy building.

     c.     Every contract of sale for a building subject to the provisions of section 3 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill), shall include a notification by the developer to the prospective owner of the offer to construct the building as a zero energy building.

     d.    The commissioner, in consultation with the Department of Environmental Protection and the Board of Public Utilities, shall compile, and make available on the Internet website of the Department of Community Affairs, information for prospective owners and developers concerning the environmental benefits of, and potential energy cost savings associated with, zero energy buildings, and any applicable credits, rebates, or other incentives that may be available to the prospective owner for purchasing a zero energy building.

     5.    The commissioner, in consultation with the Department of Environmental Protection and the Board of Public Utilities, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to effectuate the purposes of P.L.    , c.    (C.        ) (pending before the Legislature as this bill) and shall revise the code and energy subcode accordingly.

     6.    Section 1 of P.L.2009, c.106 (C.52:27D-122.2) is amended to read as follows:

     1.    The Legislature hereby finds and declares:

     a.     It is the public policy of this State to encourage and facilitate the construction of energy-efficient buildings which are designed and built to reduce overall energy demand.

     b.    While energy-efficient buildings may cost more to construct, the payback period to recoup the added investment is only a few years.

     c.     Energy savings can be most fully realized when incorporated into new construction from the beginning.

     d.    It is therefore necessary and appropriate that the Commissioner of Community Affairs, in consultation with the Board of Public Utilities, adopt energy-efficient building codes that may exceed the requirements of national model codes.

     e.     Further, in light of the serious threats posed by climate change, it is necessary and appropriate that the Commissioner of Community Affairs, in consultation with the Department of Environmental Protection and the Board of Public Utilities, adopt enhanced energy conservation construction requirements and revise these energy-efficient building codes to require that new residential and commercial buildings be constructed as zero energy ready buildings in accordance with the provisions of P.L.    , c.    (C.        ) (pending before the Legislature as this bill).

(cf: P.L.2009, c.106, s.1)

     7.    Section 5 of P.L.1975, c.217 (C.52:27D-123) is amended to read as follows:

     5.    a.  The commissioner shall after public hearing pursuant to section 4 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-4) adopt a State Uniform Construction Code for the purpose of regulating the structural design, construction, maintenance, and use of buildings or structures to be erected and alteration, renovation, rehabilitation, repair, maintenance, removal, or demolition of buildings or structures already erected.  Prior to the adoption of said code, the commissioner shall consult with the code advisory board and other departments, divisions, bureaus, boards, councils, or other agencies of State Government heretofore authorized to establish or administer construction regulations.

     Such prior consultations with departments, divisions, bureaus, boards, councils, or other agencies of State Government shall include but not be limited to consultation with the Commissioner of Health and the Public Health Council prior to adoption of a plumbing subcode pursuant to paragraph b. of this section.  Said code shall include any code, rule, or regulation incorporated therein by reference.

     b.    The code shall be divided into subcodes which may be adopted individually by the commissioner as the commissioner may from time to time consider appropriate. These subcodes shall include but not be limited to a building code, a plumbing code, an electrical code, an energy code, a fire prevention code, a manufactured or mobile home code, and a mechanical code.

     These subcodes, except for the energy subcode, shall be adoptions of the model codes of the Building Officials and Code Administrators International, Inc., the National Electrical Code, and the National Standard Plumbing Code, provided that for good reasons, the commissioner may adopt as a subcode, a model code or standard of some other nationally recognized organization upon a finding that such model code or standard promotes the purposes of P.L.1975, c.217 (C.52:27D-119 et seq.).  The initial adoption of a model code or standard as a subcode shall constitute adoption of subsequent edition year publications of the model code or standard of such other nationally recognized organization, except as provided for in paragraphs (1) through (4) of this subsection.  Adoption of publications shall not occur more frequently than once every three years; provided, however, that a revision or amendment may be adopted at any time in the event that the commissioner finds that there exists an imminent peril to the public health, safety, or welfare.

     The energy subcode shall be based upon the model codes cited under this subsection or the International Energy Conservation Code; provided, however, that the energy subcode shall be revised as necessary to comply with the requirements of P.L.    , c.    (C.        ) (pending before the Legislature as this bill).  It may be amended or supplemented by the commissioner once before 2012 without regard to intervals between the adoption of the energy subcode in effect on the effective date of P.L.2009, c.106 (C.52:27D-122.2 et al.) and subsequent year revisions of that subcode.  In amending or supplementing the energy subcode, the commissioner shall rely upon 10-year energy price projections provided by an institution of higher education within one year following the effective date of P.L.2009, c.106 (C.52:27D-122.2 et al.), and thereafter at three-year intervals.  In developing the energy price projections, the institution of higher education shall consult with the Board of Public Utilities.  The commissioner shall be authorized to amend the energy subcode to establish enhanced energy conservation construction requirements, the added cost of each of which may reasonably be recovered through energy conservation over a period of not more than seven years.  Such requirements shall include provisions to ensure that, in all parts of the State the anticipated energy savings shall be similarly proportionate to the additional costs of energy subcode compliance.

     (1)   Except as otherwise provided in this subsection, the edition of a model code or standard in effect as a subcode as of July 1, 1995 shall continue in effect regardless of any publication of a subsequent edition of that model code or standard.  Prior to establishing the effective date for any subsequent revision or amendment of any model code or standard adopted as a subcode, the commissioner shall review, in consultation with the code advisory board, the text of the revised or amended model code or standard and determine whether the amended or revised provisions of the model code are essential to carry out the intent and purpose of P.L.1975, c.217 (C.52:27D-119 et seq.) as viewed in contrast to the corresponding provisions of the subcode then currently in effect.

     (2)   In the event that the commissioner, pursuant to paragraph (1) of this subsection, determines that any amended or revised provision of a model code is essential to carry out the intent and purpose of this act as viewed in contrast to any corresponding provision of the subcode then currently in effect, the commissioner may then adopt that provision of the amended or revised model code.

     (3)   The commissioner, in consultation with the code advisory board, shall have the authority to review any model code or standard currently in effect as a subcode of the State Uniform Construction Code and compare it with previously adopted editions of the same model code or standard in order to determine if the subcode currently in effect is at least as consistent with the intent and purpose of this act as were previously adopted editions of the same model code or standard.

     (4)   In the event that the commissioner, after consultation with the code advisory board, determines pursuant to this subsection that a provision of a model code or standard currently in effect as a subcode of the State Uniform Construction Code is less consistent with the intent and purpose of P.L.1975, c.217 (C.52:27D-119 et seq.) than was the corresponding provision of a previously adopted edition of the same model code or standard, the commissioner may delete the provision in effect and substitute in its place the corresponding provision of the previously adopted edition of the same model code or standard determined to be more consistent with the intent and purpose of P.L.1975, c.217 (C.52:27D-119 et seq.).

     (5)   The commissioner shall be authorized to adopt a barrier free subcode or to supplement or revise any model code adopted hereunder, for the purpose of insuring that adequate and sufficient features are available in buildings or structures so as to make them accessible to and usable by persons with physical disabilities.  Multi-family residential buildings with four or more dwelling units in a single structure shall be constructed in accordance with the barrier free subcode; for the purposes of this subsection the term "multi-family residential buildings with four or more dwelling units in a single structure" shall not include buildings constructed as townhouses, which are single dwelling units with two or more stories of living space, exclusive of basement or attic, with most or all of the sleeping areas on one story and with most of the remaining habitable space, such as kitchen, living, and dining areas, on another story, and with an independent entrance at or near grade level.

     c.     Any municipality through its construction official, and any State agency or political subdivision of the State, may submit an application recommending to the commissioner that a State sponsored code change proposal be adopted.  Such application shall contain such technical justification and shall be submitted in accordance with such rules of procedure as the commissioner may deem appropriate, except that whenever the State Board of Education shall determine that enhancements to the code are essential to the maintenance of a thorough and efficient system of education, the enhancements shall be made part of the code; provided that the amendments do not result in standards that fall below the adopted subcodes.  The Commissioner of Education shall consult with the Commissioner of Community Affairs prior to publishing the intent of the State Board to adopt any amendments to the Uniform Construction Code. Upon adoption of any amendments by the State Board of Education they shall be transmitted forthwith to the Commissioner of Community Affairs who shall publish and incorporate the amendments as part of the Uniform Construction Code and the amendments shall be enforceable as if they had been adopted by the commissioner.

     At least 45 days prior to the final date for the submission of amendments or code change proposals to the National Model Code Adoption Agency, the code of which has been adopted as a subcode under P.L.1975, c.217 (C.52:27D-119 et seq.), the commissioner shall hold a public hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), at which testimony on any application recommending a State sponsored code change proposal will be heard.

     The commissioner shall maintain a file of such applications, which shall be made available to the public upon request and upon payment of a fee to cover the cost of copying and mailing.

     After public hearing, the code advisory board shall review any such applications and testimony and shall within 20 days of such hearing present its own recommendations to the commissioner.

     The commissioner may adopt, reject, or return such recommendations to the code advisory board for further deliberation.  If adopted, any such proposal shall be presented to the subsequent meeting of the National Model Code Agency by the commissioner or by persons designated by the commissioner as a State sponsored code change proposal.  Nothing herein, however, shall limit the right of any municipality, the department, or any other person from presenting amendments to the National Model Code Agency on its own initiative.

     The commissioner may adopt further rules and regulations pursuant to this subsection and may modify the procedures herein described when a model code change hearing has been scheduled so as not to permit adequate time to meet such procedures.

     d.    (Deleted by amendment, P.L.1983, c.496.)

(cf: P.L.2017, c.131, s.191)

     8.    This act shall take effect immediately, but shall remain inoperative until January 1, 2025, except that the Commissioner of Community Affairs, the Department of Environmental Protection, and the Board of Public Utilities, shall take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

*Added Section 9. On and after January 1, 2028, an enforcing agency shall not issue a construction permit for a new residential or commercial building unless the permit requires the building to be constructed as a zero energy building. This includes enough on-site solar or alternative clean renewable energy for the building to consume only as much energy as can be produced onsite through renewable resources. Included space and water heating appliances shall be cold climate heat pumps, and any other included appliances shall be electric.*

*The provisions listed in Sections 5 through 8 of this Bill shall remain in effect and be modified as necessary to meet the provisions of Section 9 after it takes effect.*

*Added Section 10. One year after the provisions of Sections 3 and 9 take effect, those provisions pertaining to zero energy ready and zero energy buildings shall be updated to include basic efficiency and supplementary electrification amendments for structures already erected and shall be adopted by the Department of Community Affairs into the Rehabilitation Subcode for alteration, renovation, rehabilitation, repair, or maintenance of buildings or structures already erected, making use of triggers for proportional requirements. The Board of Public Utilities shall provide resources and technical assistance during municipal adoption of the upgraded building energy performance standards and additional utility incentives to building owners to meet the upgraded standards.*

*Added Section 11. During the 2024 Code cycle and thereafter, the Uniform Construction Code shall allow for the adoption of a statewide voluntary stretch energy code that municipalities can adopt at the local level to require additional energy efficiency beyond the base energy code provisions in the Energy Subcode. The Department of Community Affairs shall be charged with developing the promulgating the statewide subcode, and the Board of Public Utilities shall be charged with implementing incentive programs and providing technical assistance to municipalities interested in adopting stretch code. Generally, the stretch provisions would include provisions expected to be included in the base code for the next Code cycle.*

***[Move this provision to a different statute?]*** *Added Section 12. No later than one year after the date of enactment of P.L.    , c.    (C.        ) (pending before the Legislature as this bill), the Board of Public Utilities shall adopt into the performance measures for public electric utilities and gas utilities described in P.L.2018, c.17 (C.48:3-87.9,* ***Public utility to reduce use of electricity, natural gas in territory)****, overall goals of 1) by December 31, 2025, 100,000 residential housing units constructed or altered as at least zero energy ready and fitted with cold climate heat pumps for space and water heating, and 2) by December 31, 2030, 800,000 residential housing units constructed or altered as at least zero energy ready and fitted with cold climate heat pumps for space and water heating. The Board of Public Utilities shall allocate these numbers among the public utilities and use the utilities’ achieving or failing to achieve the allocated goals as part of the performance it measures and uses to reward or penalize the utilities pursuant to P.L.2018, c.17 (C.48:3-87.9).*

STATEMENT

     This bill would establish the “Zero Energy Construction Act,” which would, beginning on January 1, 2025, require all new residential and commercial developments to be zero energy ready and require developers to offer zero energy construction to prospective owners. *On January 1, 2028, it would require all new residential and commercial developments to be zero energy buildings; and one year after these two provisions went into effect for new construction, the provisions would also apply to alterations of buildings already erected.*  Zero energy buildings consume only as much energy as can be produced onsite through renewable resources, and zero energy ready buildings are buildings capable of reaching this level of energy consumption with the addition of renewable resources.  Requiring new developments to be constructed as zero energy ready will reduce both the consumption of energy that contributes to climate change as well as the long-term energy costs of home and business owners.

*Additionally, the Department of Consumer Affairs would adopt a statewide energy stretch code that could be adopted voluntarily by municipalities, providing them the opportunity to require more stringent energy measures before those measures are implemented in the basic Uniform Construction Code.*

     The bill requires the Commissioner of Community Affairs, in consultation with the Department of Environmental Protection and the Board of Public Utilities, to compile, and make available on the Internet website of the Department of Community Affairs, information for prospective owners and developers concerning the environmental benefits of, and potential energy cost savings associated with, zero energy buildings, and any applicable credits, rebates, or other incentives that may be available to the prospective owner for purchasing a zero energy building.  The bill also requires the Commissioner of Community Affairs, in consultation with the Department of Environmental Protection and the Board of Public Utilities, to adopt rules and regulations necessary to effectuate the purposes of the bill and to revise the State Uniform Construction Code and the energy subcode accordingly.

***[Leave out of this Bill?]****The bill also requires the Board of Public Utilities to set goals for the total number of buildings electrified and space- and water-heated by cold climate heat pumps of 100,000 by the end of 2025 and 800,000 by the end of 2030. It requires the Board of Public Utilities to allocate those goals among the Public Utilities and use the Utilities’ success or failure at achieving their goals as part of their performance measures.*

     While the construction requirements of the bill would be inoperative until January 1, 2025*, or January 1, 2028, respectively,* the bill authorizes the Commissioner of Community Affairs, the Department of Environmental Protection, and the Board of Public Utilities, to take any anticipatory administrative action in advance as is necessary for the implementation of the bill.