

November 20, 2023

ASSEMBLY BILL NO. 5179
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 5179 (First Reprint) with my recommendations for reconsideration.

Assembly Bill No. 5179 (First Reprint), entitled the "Fire Life Safety Damper and Smoke Control System Inspection Verification Act," aims to codify periodic inspection and testing, routine maintenance, and compliance and reporting requirements for fire dampers, smoke dampers, combination fire and smoke dampers, and smoke control systems installed in buildings throughout the State. The bill also establishes certification and training requirements for contractors and their employees who provide testing services for smoke and fire dampers and smoke control systems. And it imposes penalties on anyone who violates provisions of the bill or regulations adopted pursuant to the bill's authority.

I commend my colleagues in the Legislature and the fire safety advocates who championed this bill for their recognition that properly installed and functioning fire dampers, smoke dampers, combination fire and smoke dampers, and smoke control systems are critical fire prevention tools. I wholeheartedly agree that these smoke and fire protection mechanisms should be tested properly and regularly, and that building owners and operators who skirt compliance requirements should be held responsible. My Administration also agrees that it makes sense to certify the contractors who perform fire and smoke damper and smoke control system testing. Credentialing not only ensures that fire protection professionals receive proper training and have sufficient experience to perform their duties, but also helps to attract and retain quality workers in this essential field.

Despite these laudable goals, I am concerned that this bill is, in many ways, redundant of the requirements found in the Uniform Fire Code ("UFC") – which has been adopted and is enforced by the Division of Fire Safety ("DFS") in the Department of Community Affairs ("DCA") – and

bypasses the standard process by which DFS updates the UFC. Importantly, for example, the UFC already incorporates routine maintenance and periodic testing requirements, as well as reporting requirements, for smoke dampers, fire dampers, combination fire and smoke dampers, and smoke control systems in New Jersey buildings. These requirements were adopted in accordance with international best practices embodied in model codes.

Relatedly, the UFC also already imposes larger penalties for noncompliance than those that would be imposed under the bill. Finally, requiring all building owners to submit compliance certificates with DCA, and subsequently requiring DCA to initiate enforcement actions for noncompliance, is out of step with the State's current fire protection regime, wherein local enforcing agencies are primarily responsible for inspections and enforcement, with the exception of certain jurisdictions where DFS has assumed the local agency's responsibilities. It is important to note that DFS is in the process of building out new information technology infrastructure to better enable seamless and efficient communication between local enforcing agencies and the State. This will provide more insight into noncompliance and allow for more responsive enforcement, helping to achieve the goals of the bill.

Imposing new statutory requirements onto this regime would lead to regulated parties and enforcing agencies having to consult two overlapping sources of law. Additionally, it would prevent DFS from flexibly updating the UFC as standards evolve. For these reasons, I am recommending changes to the bill that would remove the provisions overlapping with the UFC, while reinforcing DFS's statutory authority to promulgate rules regulating the installation, testing, and inspection of smoke and fire dampers and smoke control systems.

For the reasons discussed above, however, I do support creating a system for certifying contractors involved in the installation, testing, and maintenance of fire dampers, smoke dampers, combination fire and smoke dampers, and smoke control systems. My recommended amendments preserve the core component of this bill, while facilitating DFS's

authority to promulgate rules and regulations in this subject area within its current fire protection contractor certification regime. The primary change I am recommending in this area is to remove certain training and experience requirements in the bill – while still ensuring minimum training and experience standards are included in DFS rulemaking – as the requirements underlying certification for fire protection contractors are better suited to be set forth in regulations. Through the regulatory process, DFS will directly engage with advocates and stakeholders and make an informed judgment about how to best address safety and workforce goals.

As mentioned, the fire protection goals embodied by this bill are admirable, and I once again would like to thank the bill's sponsors for promoting the regular testing and maintenance of fire and smoke dampers and smoke protection systems. I am confident that my recommended amendments will enable DFS to continue to effectively address these issues through the regulatory process and lead to the development of a credentialed, experienced, and well-trained workforce.

Therefore, I herewith return Assembly Bill No. 5179 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 2, Line 35:</u>	Delete "enforce the requirement that" and insert "have"
<u>Page 2, Section 2, Lines 36-37:</u>	Delete in their entirety
<u>Page 2, Section 2, Line 38:</u>	Delete "inspectors" and insert "contractors"
<u>Page 2, Section 2, Line 38:</u>	Delete "such"
<u>Page 2, Section 2, Line 39:</u>	After "testing" insert "of smoke control systems and fire dampers, smoke dampers, and combination fire and smoke dampers"
<u>Page 2, Section 3, Lines 41-45:</u>	Delete in their entirety
<u>Page 3, Section 3, Lines 1-48:</u>	Delete in their entirety
<u>Page 4, Section 3, Lines 1-21:</u>	Delete in their entirety
<u>Page 4, Section 4, Line 23:</u>	Delete "4." and insert "3."
<u>Page 4, Section 4, Line 27:</u>	Delete "required to be"
<u>Page 4, Section 4, Line 27:</u>	Delete "pursuant to the State Uniform"

Page 4, Section 4, Lines 28-29: Delete in their entirety

Page 4, Section 4, Line 31: Delete "Safety"

Page 4, Section 4, Line 34: Delete "Fire dampers, smoke dampers, and combination fire and"

Page 4, Section 4, Lines 35-48: Delete in their entirety

Page 5, Section 4, Lines 1-3: Delete in their entirety

Page 5, Section 4, Line 4: Delete "new"

Page 5, Section 4, Line 5: Delete in its entirety

Page 5, Section 4, Line 6: Delete "before the Legislature as this bill)"

Page 5, Section 4, Lines 8-9: Delete "newly installed"

Page 5, Section 4, Line 9: After "testing" insert "as required by the applicable standards adopted pursuant to the Uniform Fire Code"

Page 5, Section 4, Lines 10-27: Delete in their entirety

Page 5, Section 5, Line 29: Delete "5." and insert "4."

Page 5, Section 5, Line 34: Delete "A" and insert "The Commissioner of Community Affairs shall, pursuant to the authority under the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.), promulgate rules and regulations to require a"

Page 5, Section 5, Line 35: Delete "shall" and insert "to"

Page 5, Section 5, Line 37: Delete "section 4 of P.L. , c. (C.) (pending" and insert "the applicable standards adopted pursuant to the Uniform Fire Code."

Page 5, Section 5, Line 38: Delete in its entirety

Page 5, Section 6, Lines 40-48: Delete in their entirety

Page 6, Section 6, Lines 1-41: Delete in their entirety

Page 6, Section 7, Line 43: Delete "7." and insert "5. The Commissioner of Community Affairs shall, pursuant to the authority under the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.), promulgate rules and regulations to require the following:"

Page 6, Section 7, Line 46: Delete "which shall verify the" and insert "."

Page 6, Section 7, Line 47: Delete in its entirety

Page 7, Section 7, Lines 1-10: Delete in their entirety

- Page 7, Section 7, Line 16: After "compliance" insert "and any other information deemed necessary by the department"
- Page 7, Section 7, Line 16: Delete "The deficiency report shall also contain:"
- Page 7, Section 7, Lines 17-48: Delete in their entirety
- Page 8, Section 7, Lines 1-48: Delete in their entirety
- Page 9, Section 9, Lines 1-12: Delete in their entirety
- Page 9, Section 9, Line 13: Delete "or municipal court." and insert "6. Section 1 of P.L.2001, c.289 (C.52:27D-25n) is amended to read as follows:
1. As used in sections 1 through 19 of [this act] P.L.2001, c.289 (C.52:27D-25n et seq.):
- "Business entity" means a proprietor, corporation, partnership or company operating as a fire protection contractor.
- "Carbon dioxide fire protection system" means a special hazard fire suppression system that uses carbon dioxide as its extinguishing agent.
- "Certificate of certification" means a certificate issued by the commissioner that authorizes a person to engage in the fire protection equipment business to the degree indicated on the certificate.
- "Certificate holder" means a person who is certified to engage in the fire protection equipment business.
- "Clean agent fire suppression system" means a special hazard fire suppression system that uses an extinguishing agent that will not damage the contents of the hazard.
- "Combination fire and smoke damper" means a device that meets both the fire damper and smoke damper requirements.
- "Commissioner" means the Commissioner of Community Affairs.
- "Committee" means the Fire Protection Equipment Advisory Committee created by section 2 of this act.

"Dedicated smoke control system" means a smoke control system and components that are installed for the sole purpose of providing smoke control and that upon activation of the systems operate specifically to perform the smoke control function.

"Director" means the Director of the Division of Fire Safety in the Department of Community Affairs.

"Division" means the Division of Fire Safety in the Department of Community Affairs.

"Engineered fire suppression system" means a fire suppression system which is designed individually to suit a particular purpose or hazard. Such a system requires individual calculation and design to determine the flow rates, nozzle pressures, pipe size, area or volume to be protected by each nozzle, quantities of extinguishing agent and the number and types of nozzles and their placement in a specific system.

"Fire alarm system" means a system which provides a warning alarm signaling the presence of fire conditions and may be capable of initiating an action to suppress a fire condition.

"Fire damper" means a device installed in ducts and air transfer openings designed to close automatically upon detection of heat and resist the passage of flame. Fire dampers are classified for use in either static systems that will automatically shut down in the event of a fire, or in dynamic systems that continue to operate during a fire. A dynamic fire damper is tested and rated for closure under elevated temperature airflow.

"Fire protection equipment" includes fire alarm systems, fire sprinkler systems, standpipe systems, clean agent fire suppression systems, special hazard fire suppression systems, carbon dioxide fire protection systems, foam fire protection systems, kitchen fire suppression systems, portable fire extinguishers or any other equipment designed to detect, suppress or extinguish a fire.

"Fire protection subcode official" means a qualified person appointed by the appropriate appointing authority or the commissioner pursuant to the authority of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Fire protection contractor" or "contractor" means a person or business entity that offers to undertake or represents itself as being able to undertake, or does undertake the installation, service, sale, repair, inspection or maintenance of fire protection equipment.

"Fire protection contractor business permit" means a permit issued by the commissioner to a business entity to operate as a fire protection contractor.

"Fire sprinkler system" means an automatic fire suppression system that includes an automatic water sprinkler system or a standpipe system and related system components, including detection.

"Fire suppression system" means an engineered or pre-engineered system that suppresses a fire using an extinguishing agent distributed through fixed piping and nozzles that are activated either manually or automatically. The system may include containers, nozzles, controls, automatic detection, manual releases, equipment shut downs and alarms. In such systems, an extinguishing agent is discharged through fixed pipes and nozzles into or over a potential fire hazard.

"Foam fire protection system" means a special hazard fire suppression system that uses foam as its extinguishing agent.

"Kitchen fire suppression system" means a pre-engineered system which is designed specifically to protect the hood, duct, and cooking appliances of a kitchen. The system, which may include containers, nozzles, controls, automatic detection, manual release, cooking appliance shutdown equipment, and alarms will have an extinguishing agent discharged through fixed pipes

and nozzles over and into the fire hazard area.

["Certificate of certification" means a certificate issued by the commissioner that authorizes a person to engage in the fire protection equipment business to the degree indicated on the certificate.

"Certificate holder" means a person who is certified to engage in the fire protection equipment business.]

"Maintenance" means the function of keeping equipment in such a condition that it will perform as it originally was designed to do.

"Portable fire extinguisher" means a portable device, carried or on wheels and operated by hand, containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing fire.

"Pre-engineered system" means a fire suppression system having predetermined flow rates, nozzle pressures, detection and quantities of extinguishing agent. Such a system has the specific pipe size, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and types of nozzles prescribed by a testing laboratory. The hazards protected by such a system are specifically limited as to type and size by a testing laboratory based upon actual fire tests. Limitations on hazards which can be protected by such a system are contained in the manufacturer's installation manual which is referenced as a part of the listing.

"Smoke control system" means an engineered system that includes all methods that can be used singly or in combination to modify smoke movement, including engineered systems that use mechanical fans to produce pressure differences across smoke barriers to inhibit smoke movement.

"Smoke damper" means a device installed in ducts and air transfer openings designed to resist the passage of smoke. The device is installed to operate

automatically, controlled by a smoke detection system, and where required, is capable of being positioned from a fire command center.

"Special hazard fire suppression system" means a fire suppression system that uses an extinguishing agent other than water.

"Standpipe system" means a fire protection system consisting of an arrangement of piping, valves, hose outlets, and allied equipment installed in a building or structure.

"Warranty" means a written guarantee given to a purchaser of fire protection equipment covering a period of one year after the installation of new fire protection equipment.

(cf: P.L.2001, c.289,s.1)

7. Section 4 of P.L. 2001, c.289 (C.52:27D-25q) is amended to read as follows:

4. a. After the effective date of [this act] P.L.2001, c.289, no fire protection contractor shall engage in the installation, service, repair, inspection or maintenance of fire protection equipment without holding or employing a person who holds a valid certificate of certification issued in accordance with [this act] P.L.2001, c.289 (C.52:27D-25n et seq.), except that the commissioner shall determine by rules and regulations the date after which no contractor may engage in the installation, service, repair, inspection or maintenance of fire dampers, smoke dampers, combination fire and smoke dampers, or smoke control systems without holding or employing a person who holds a valid certificate of certification issued in accordance with P.L. , c. (C.) (pending before the Legislature as this bill). A fire protection contractor who is not a certificate holder shall be required to obtain a fire protection contractor business permit from the commissioner, which shall be issued for three years upon payment of an appropriate fee set by the commissioner and proof that the

fire protection contractor employs a certificate holder. Notwithstanding the provisions of this section, persons holding a license to engage in the fire alarm business pursuant to P.L.1997, c.305 (C.45:5A-23 et seq.), or who are electrical contractors as defined in section 2 of P.L.1962, c.162 (C.45:5A-2), are exempt from the requirement of obtaining a certificate of certification under this act to engage in the fire alarm business pursuant to this act to the extent that such persons are acting within the scope of practice of their profession or occupation.

The certificate required by this section shall define by class the type of work in which a fire protection contractor may engage.

Notwithstanding any provision of [this act] P.L.2001, c.289, the commissioner shall issue a certificate to any person who has been employed as a fire protection contractor for a period of not less than five years on or before the effective date of this act, upon application with submission of satisfactory proof and payment by that person of the appropriate certification fee within 180 days following the effective date of this act.

b. The following certified classifications are hereby established:

(1) An "All Fire Protection Equipment Contractor" is authorized to install, service, repair, inspect and maintain all fire protection equipment listed in paragraphs (2) through (6) of this subsection.

(2) A "Fire Sprinkler System Contractor" is authorized to install, service, repair, inspect and maintain fire sprinkler systems.

(3) A "Special Hazard Fire Suppression System Contractor" is authorized to install, service, repair, inspect and maintain special hazard fire suppression systems and kitchen fire suppression systems.

(4) A "Fire Alarm System Contractor" is authorized to install, service, repair, inspect

and maintain all fire alarm systems.

(5) A "Portable Fire Extinguisher Contractor" is authorized to install, service, repair, inspect and maintain all portable fire extinguishers.

(6) A "Kitchen Fire Suppression System Contractor" is authorized to install, service, repair, inspect and maintain all kitchen fire suppression systems.

(7) A "Smoke Damper, Fire Damper, and Combination Fire and Smoke Damper Contractor" is authorized to install, service, repair, inspect and maintain all smoke dampers, fire dampers, and combination fire and smoke dampers. In addition to any other requirements adopted by the commissioner, a Smoke Damper, Fire Damper, and Combination Fire and Smoke Damper Contractor shall participate in an approved apprenticeship or skill training program that is registered with, and approved by, the United States Department of Labor or a State apprenticeship agency, as defined by the commissioner in rules or regulations, unless the commissioner determines by rule or regulation that requiring participation in such a program would be substantially detrimental to ensuring that a sufficient number of contractors are certified to conduct the work within the scope of the contractor's certification class statewide, and shall hold a certification from an organization that has been accredited under or meets the criteria required by the International Organization for Standardization/International Electrotechnical Commission 17024 Personnel Certification standard, or such substantially similar certification as determined by the commissioner in rules or regulations. Notwithstanding the provisions of this section, the commissioner may exempt by regulation persons with related licenses or credentials from the requirement of obtaining a certificate of certification as a Smoke Damper, Fire Damper, and Combination Fire and Smoke Damper Contractor to engage in the initial installation of smoke dampers, fire dampers, and

combination fire and smoke dampers to the extent that such persons are acting within the scope of practice of their profession or occupation.

(8) A "Smoke Control System Contractor" is authorized to install, service, repair, inspect and maintain all smoke control systems. In addition to any other requirements adopted by the commissioner, a Smoke Control System Contractor shall participate in an approved apprenticeship or skill training program that is registered with, and approved by, the United States Department of Labor or a State apprenticeship agency, as defined by the commissioner in rules or regulations, unless the commissioner determines by rule or regulation that requiring participation in such a program would be substantially detrimental to ensuring that a sufficient number of contractors are certified to conduct the work within the scope of the contractor's certification class statewide, and shall hold a certification from an organization that has been accredited under or meets the criteria required by the International Organization for Standardization/International Electrotechnical Commission 17024 Personnel Certification standard, or such substantially similar certification as determined by the commissioner in rules or regulations. Notwithstanding the provisions of this section, the commissioner may exempt by regulation persons with related licenses or credentials from the requirement of obtaining a certificate of certification as a Smoke Control System Contractor to engage in the initial installation of smoke control systems to the extent that such persons are acting within the scope of practice of their profession or occupation.

c. A certified fire protection contractor shall perform work only within the scope of the contractor's certification class.

d. Any change in more than 50% of the ownership of a fire protection contractor shall require an amended certificate of

certification. An application for an amended certificate of certification shall be submitted within 60 days of a change of ownership or change of company name or location. Certificates of certification are non-transferable and shall be displayed prominently in the principal workplace. A certificate holder shall not be used to qualify more than one fire protection contractor. The commissioner shall be notified within 30 days if a certificate holder leaves the fire protection contractor or is replaced. Notwithstanding subsection a. of this section, no fire protection contractor shall be denied the privilege of continuing business as a fire protection contractor in the event of death, illness, or other physical disability of the certificate holder who qualified the fire protection contractor for a business permit under this section, for at least six months following the date of such death, illness or other physical disability; provided that the fire protection contractor operates under such qualified supervision as the commissioner deems adequate. If, after six months, the fire protection contractor has failed to employ another certificate holder, then the commissioner shall revoke its fire protection contractor business permit.

e. Whenever the commissioner shall find cause to deny an application for a certificate of certification or to suspend or revoke a certificate, he shall notify the applicant or the holder of the certificate and state the reasons for the denial or suspension, as appropriate.

f. Whenever the commissioner shall find cause to deny an application for a fire protection contractor business permit or to suspend or revoke a fire protection contractor business permit, he shall notify the applicant or the holder of the business permit and state the reasons for the denial or suspension, as appropriate.

g. Any person subject to certification under [this act] paragraphs (1) through (6) of subsection b. of this section

shall be exempt from any other State, county or municipal certification, licensing or registration requirements for installing, servicing, repairing, inspecting or maintaining fire protection equipment.

(cf: P.L.2001, c.289, s.4)"

Page 9, Section 10, Line 15:

Delete "10." and insert "8."

Page 9, Section 10, Line 15:

Delete "upon the adoption of the rules and" and insert "immediately, but its provisions shall remain inoperative until"

Page 9, Section 10, Lines 16-18

Delete in their entirety

Page 9, Section 10, Line 19:

Delete "or"

Page 9, Section 10, Line 19:

Delete "whichever comes first" and insert "except that the Commissioner of Community Affairs may take any anticipatory steps necessary to effectuate the provisions of this bill"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor