Sponsored by:
Senator SEAN T. KEAN
District 11 (Monmouth)

SYNOPSIS
Creates the “Mold Safe Housing Act.”

CURRENT VERSION OF TEXT
As introduced.

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

1. (New section) This act shall be known and may be cited as the “Mold Safe Housing Act.”

2. (New section) As used in this act:
   “Substantial presence of mold” means the visible or detectable presence of mold growing on interior surfaces or in ventilation ducts, in such amounts as to raise concerns for the health of the residents of the building, in accordance with standards promulgated by the Department of Community Affairs pursuant to P.L. ___, c. __ (pending before the legislature as Senate Bill No. 2633 of 2011).

3. (New section) a. In any case where a change of occupancy of any building subject to the requirements of section 1 of P.L.1991, c.92 (C.52:27D-198.1) is subject to a municipal ordinance requiring the issuance of a certificate of occupancy, certificate of inspection or other documentary certification of compliance with laws and regulations relating to safety, healthfulness and upkeep of the premises, no such certificate shall issue until the municipal officer or agency responsible for its issuance has received a certification that the building has been inspected for and found free of any visible or detectable indications of the substantial presence of mold.

b. In the case of change of occupancy of any building subject to the requirements of section 1 of P.L.1991, c.92 (C.52:27D-198.1) to which the provisions of subsection a. of this section do not apply, no owner shall sell, lease or otherwise permit occupancy for residential purposes of that building without first obtaining from the Bureau of Housing Inspection of the Division of Codes and Standards, Department of Community Affairs, a certificate evidencing compliance with the requirements section 6 of P.L. ___, c. __ (pending before the Legislature as this bill). The Commissioner of Community Affairs shall establish a fee which covers the costs of any inspection required, and of issuance of the certificate.

4. (New section) a. A tenant residing in rental housing who believes that the housing contains a substantial mold hazard shall

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.
notify the landlord of the premises, in writing, and request remediation of the mold hazard.

b. A landlord who has been notified in writing by a tenant that the tenant believes a substantial mold hazard exists shall investigate the condition within 72 hours of receiving the written notification. If any visible signs of mold on surfaces are present, the landlord shall clean and remove the mold from those surfaces in a manner consistent with the regulations promulgated by the department. Any leaking pipes, roofing or walls which are contributing to a wet condition that in turn is furthering the growth of mold shall be fixed in an expedited manner by the landlord. Any mold conditions which will require testing to determine the efficacy of the mold removal shall be performed by persons certified to remediate mold in accordance with P.L. , c. (pending before the Legislature as Senate Bill No. 2633 of 2011).

c. In the event a tenant notifies a landlord who does not comply with subsection b. of this section, the tenant shall be entitled to contact the Commissioner of Community Affairs for consideration for a referral to the relocation program established pursuant to P.L. , c. (pending before the Legislature as this bill).

5. (New section) a. The Commissioner of Community Affairs shall review any case referred to the department in which a substantial mold hazard condition has been found to exist and which poses an immediate risk of continuing exposure to mold hazard for any tenants living in rental housing. The commissioner shall determine whether the removal of the residents from the rental housing unit containing that mold hazard is warranted.

b. If the commissioner determines that the removal and relocation of the residents from such housing is warranted, then the commissioner shall authorize the payment of relocation assistance pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.), and shall assist in the relocation of such residents to mold-safe housing.

c. Whenever relocation assistance is authorized pursuant to this section, the commissioner may determine to seek reimbursement for payments made for relocation assistance from the owner of the rental housing from which the tenants were moved. The commissioner shall seek reimbursement if the owner of such rental housing had failed to maintain the housing in a mold-safe condition.

d. In the case of any displacement of a household from a unit of rental housing that has been found, in a final administrative or judicial determination, not to be maintained in a mold-safe condition in accordance with standards established by rule of the Department of Community Affairs, all relocation costs incurred by a public agency to relocate that household shall be paid by the owner of the rental housing to the public agency making relocation payments upon presentation to the owner by the public agency of a
statement of those relocation costs and of the date upon which the
relocation costs are due and payable.

e. In the event that the relocation costs to be paid to the public
agency are not paid within ten days after the due date, interest shall
accrue and be due to the public agency on the unpaid balance at the
rate of 18% per annum until the costs, and the interest thereon, shall
be fully paid to the public agency.
f. In the event that the relocation costs to be paid to a public
agency shall not be paid within ten days after the date due, the
unpaid balance thereof and all interest accruing thereon shall be a
lien on the parcel in which the dwelling unit from which
displacement occurred is located. To perfect the lien granted by
this section, a statement showing the amount and due date of the
unpaid balance and identifying the parcel, which identification shall
be sufficiently made by reference to the municipal assessment map,
shall be recorded with the clerk or register of the county in which
the affected property is located and, upon recording, the lien shall
have the priority of a mortgage lien. Whenever relocation costs
with regard to the parcel and all interest accrued thereon shall have
been fully paid to the public agency, the statement shall be
promptly withdrawn or canceled by the public agency.
g. In the event that relocation costs to be paid to a public agency
are not paid as and when due, the unpaid balance thereof and all
interest accrued thereon, together with attorney's fees and costs,
may be recovered by the public agency in a civil action as a
personal debt of the owner of the property. If the owner is a
corporation, the directors, officers and any shareholders who each
control more than 5% of the total voting shares of the corporation,
shall be personally liable, jointly and severally, for the relocation
costs.
h. All rights and remedies granted by this section for the
collection and enforcement of relocation costs shall be cumulative
and concurrent.

6. (New section) Notwithstanding any other provisions of
P.L. , c. (pending before the Legislature as this bill), a
dwelling unit shall not be subject to inspection and evaluation or
subject to any fees for the presence of mold hazards if the unit:
has been certified as having a mold-free interior by a certified
inspector; or
is occupied by the owner of the dwelling unit.

7. N.J.S.2A:18-59 is amended to read as follows:
2A:18-59 a. Proceedings had by virtue of [this] article 9 of
chapter 18 of Title 2A shall not be appealable except on the ground
of lack of jurisdiction. The landlord, however, shall remain liable
in a civil action for unlawful proceedings under this article.

b. Whenever the court determines that a tenant has been
constructively evicted by a landlord who has maintained the rental
premises in an uninhabitable condition, including the failure to
address the presence of mold, a copy of the notice of the judgment
to that effect shall be provided to the Commissioner of Community
Affairs.

(cf: N.J.S.2A:18-59)

8. Section 2 of P.L.1997, c.323 (C.45:8-62) is amended to read
as follows:

2. As used in this act:
"Board" means the State Board of Professional Engineers and
Land Surveyors.
"Client" means any person who engages, or seeks to engage, the
services of a home inspector for the purpose of obtaining inspection
of and written report upon the condition of a residential building.
"Committee" means the Home Inspection Advisory Committee
established pursuant to section 3 of this act.
"Home inspector" means any person licensed as a home
inspector pursuant to the provisions of [this act] P.L.1997, c.323
(C.45:8-61 et seq.).
"Home inspection" means an inspection and written evaluation
of the following components of a residential building: heating
system, cooling system, plumbing system, electrical system,
structural components, foundation, roof, masonry structure, exterior
and interior components or any other related residential housing
component as determined by the board by regulation; in addition, a
home inspection may include an inspection for the visible and
detectable presence of substantial mold hazards, if specifically
requested by a purchaser of a residential housing unit.
"Residential building" means a structure consisting of from one
to four family dwelling units that has been occupied as such prior to
the time when a home inspection is requested or contracted for in
accordance with this act, but shall not include any such structure
newly constructed and not previously occupied.

(cf: P.L.2005, c.201, s.1)

9. Section 15 of P.L.1997, c.323 (C.45:8-75) is amended to read
as follows:

15. No person licensed as a home inspector pursuant to [this act]
P.L.1997, c.323 (C.45:8-61 et seq.) shall:
a. engage in the practice of architecture or the practice of
professional engineering unless licensed therefore; or
b. engage in the practice of mold inspection or mold hazard
abatement unless certified to do so pursuant to P.L.______.
c. (C.____) (pending before the Legislature as Senate Bill No. 2633 of 2011.)

cf: P.L.2001, c.158, s.2)

10. Section 2 of P.L.1993, c.30 (C.45:22A-44) is amended to read as follows:
2. a. Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.

b. The association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

c. The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation.

d. The association may assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

e. Notwithstanding any governing documents to the contrary, no association shall deny permission to a unit owner to abate the presence of mold in or around the immediate areas of the owners’ dwelling unit, provided that the association may control the implementation of mold hazard abatement in the common elements.

cf: P.L.1993, c.30, s.2)

11. Section 3 of P.L.1967, c.76 (C.55:13A-3) is amended to read as follows:
3. The following terms whenever used or referred to in this act shall have the following respective meanings for the purposes of this act, except in those instances where the context clearly indicates otherwise:

(a) The term "act" shall mean this act, any amendments or supplements thereto, and any rules and regulations promulgated thereunder.

(b) The term "accessory building" shall mean any building which is used in conjunction with the main building of a hotel, whether separate therefrom or adjoining thereto.

(c) The term "board" shall mean the Hotel and Multiple Dwelling Health and Safety Board created by subsection (a) of section 5 of this act in the Division of Housing and Development of the Department of Community Affairs.

(d) The term "bureau" shall mean the Bureau of Housing Inspection in the Department of Community Affairs.

(e) (Deleted by amendment.)

(f) The term "commissioner" shall mean the Commissioner of the Department of Community Affairs.
(g) The term "department" shall mean the Department of Community Affairs.

(h) The term "unit of dwelling space" or the term "dwelling unit" shall mean any room or rooms, or suite or apartment thereof, whether furnished or unfurnished, which is occupied, or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one or more persons, including but not limited to the owner thereof, or any of his servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy thereof.

(i) The term "protective equipment" shall mean any equipment, device, system or apparatus, whether manual, mechanical, electrical or otherwise, permitted or required by the commissioner to be constructed or installed in any hotel or multiple dwelling for the protection of the occupants or intended occupants thereof, or of the public generally.

(j) The term "hotel" shall mean any building, including but not limited to any related structure, accessory building, and land appurtenant thereto, and any part thereof, which contains 10 or more units of dwelling space or has sleeping facilities for 25 or more persons and is kept, used, maintained, advertised as, or held out to be, a place where sleeping or dwelling accommodations are available to transient or permanent guests.

This definition shall also mean and include any hotel, motor hotel, motel, or established guesthouse, which is commonly regarded as a hotel, motor hotel, motel, or established guesthouse, as the case may be, in the community in which it is located; provided, that this definition shall not be construed to include any building or structure defined as a multiple dwelling in this act, registered as a multiple dwelling with the Commissioner of Community Affairs as hereinafter provided, and occupied or intended to be occupied as such nor shall this definition be construed to include a rooming house or a boarding house as defined in the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) or, except as otherwise set forth in P.L.1987, c.270 (C.55:13A-7.5, 55:13A-7.6, 55:13A-12.1, 55:13A-13.2), any retreat lodging facility, as defined in this section.

(k) The term "multiple dwelling" shall mean any building or structure of one or more stories and any land appurtenant thereto, and any portion thereof, in which three or more units of dwelling space are occupied, or are intended to be occupied by three or more persons who live independently of each other. This definition shall also mean any group of ten or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two units of dwelling space are occupied or intended to be occupied by two persons or households living independently of
each other, and any land appurtenant thereto, and any portion thereof. This definition shall not include:

(1) any building or structure defined as a hotel in this act, or registered as a hotel with the Commissioner of Community Affairs as hereinafter provided, or occupied or intended to be occupied exclusively as such;

(2) a building section containing not more than four dwelling units, provided the building has at least two exterior walls unattached to any adjoining building section and the dwelling units are separated exclusively by walls of such fire-resistant rating as comports with the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) at the time of their construction or with a rating as shall be established by the bureau in conformity with recognized standards and the building is held under a condominium or cooperative form of ownership, or by a mutual housing corporation, provided that if any units within such a building section are not occupied by an owner of the unit, then that unit and the common areas within that building section shall not be exempted from the definition of a multiple dwelling for the purposes of P.L.1967, c.76 (C.55:13A-1 et seq.). A condominium association, or a cooperative or mutual housing corporation shall provide the bureau with any information necessary to justify an exemption for a dwelling unit pursuant to this paragraph; or

(3) any building of three stories or less, owned or controlled by a nonprofit corporation organized under any law of this State for the primary purpose to provide for its shareholders or members housing in a retirement community as same is defined under the provisions of the "Retirement Community Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.), provided that the corporation meets the requirements of section 2 of P.L.1983, c.154 (C.55:13A-13.1).

(l) The term "owner" shall mean the person who owns, purports to own, or exercises control of any hotel or multiple dwelling. The term "owner" shall also mean and include any person who owns, purports to own, or exercises control over three or more dwelling units within a multiple dwelling.

(m) The term "person" shall mean any individual, corporation, association, or other entity, as defined in R.S.1:1-2.

(n) The term "continuing violation" shall mean any violation of this act or any regulation promulgated thereunder, where notice is served within two years of the date of service of a previous notice and where violation, premise and person cited in both notices are substantially identical.

(o) The term "project" shall mean a group of buildings subject to the provisions of this act, which are or are represented to be under common or substantially common ownership and which stand on a single parcel of land or parcels of land which are contiguous and which group of buildings is named, designated or advertised as a common entity. The contiguity of such parcels shall not be
adversely affected by public rights-of-way incidental to such
buildings.

(p) The term "mutual housing corporation" means a corporation
not-for-profit incorporated under the laws of New Jersey on a
mutual or cooperative basis within the scope of Title VI, s.607 of
the "Lanham Public War Housing Act," 54 Stat. 1125, 42U.S.C.
s.1501 et seq., as amended, which acquired a National Defense
Housing Project pursuant to said act.

(q) "Condominium" means the form of ownership so defined in
the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

(r) "Cooperative" means a housing corporation or association
which entitles the holder of a share or membership interest thereof
to possess and occupy for dwelling purposes a house, apartment or
other structure owned or leased by said corporation or association,
or to lease or purchase a dwelling constructed or to be constructed
by said corporation or association.

(s) "Retreat lodging facility" means a building or structure,
including but not limited to any related structure, accessory
building, and land appurtenant thereto, and any part thereof, owned
by a nonprofit corporation or association which has tax-exempt
charitable status under the federal Internal Revenue Code and which
has sleeping facilities used exclusively on a transient basis by
persons participating in programs of a religious, cultural or
educational nature, conducted under the sole auspices of one or
more corporations or associations having tax-exempt charitable
status under the federal Internal Revenue Code, which are made
available without any mandatory charge to such participants.

(t) “Homeowners’ association” means the association formed to
manage the common elements of a condominium, cooperative, or a
planned real estate development.

(u) "Substantial presence of mold" means the visible or
detectable presence of mold growing on interior surfaces or in
ventilation ducts, in such amounts as to raise concerns for health of
the residents of the building, in accordance with standards
promulgated by the Department of Community Affairs pursuant to
P.L. , c. (C. ) (pending before the legislature as Senate Bill
No. 2633 of 2011),
(cf: P.L.1999, c.384, s.1)

12. Section 7 of P.L.1967, c.76 (C.55:13A-7) is amended to read
as follows:

7. The commissioner shall issue and promulgate, in the manner
specified in section 8 of P.L.1967, c.76 (C.55:13A-8), such
regulations as the commissioner may deem necessary to assure that
any hotel or multiple dwelling will be maintained in such manner as
is consistent with, and will protect, the health, safety and welfare of
the occupants or intended occupants thereof, or of the public
generally.
Any such regulations issued and promulgated by the commissioner pursuant to this section shall provide standards and specifications for such maintenance materials, methods and techniques, fire warning and extinguisher systems, elevator systems, emergency egresses, and such other protective equipment as the commissioner shall deem reasonably necessary to the health, safety and welfare of the occupants or intended occupants of any units of dwelling space in any hotel or multiple dwelling, including but not limited to:

(a) Structural adequacy ratings;
(b) Methods of egress, including fire escapes, outside fireproof stairways, independent stairways, and handrails, railings, brackets, braces and landing platforms thereon, additional stairways, and treads, winders, and risers thereof, entrances and ramps;
(c) Bulkheads and scuttles, partitions, walls, ceilings and floors;
(d) Garbage and refuse collection and disposal, cleaning and janitorial services, repairs, and extermination services;
(e) Electrical wiring and outlets, and paints and the composition thereof;
(f) Doors, and the manner of opening thereof;
(g) Transoms, windows, shafts and beams;
(h) Chimneys, flues and central heating units;
(i) Roofing and siding materials;
(j) Lots, yards, courts and garages, including the size and location thereof;
(k) Intakes, open ducts, offsets and recesses;
(l) Windows, including the size and height thereof;
(m) Rooms, including the area and height thereof, and the permissible number of occupants thereof;
(n) Stairwells, skylights and alcoves;
(o) Public halls, including the lighting and ventilation thereof;
(p) Accessory passages to rooms;
(q) Cellars, drainage and air space;
(r) Water-closets, bathrooms and sinks;
(s) Water connections, including the provision of drinking and hot and cold running water;
(t) Sewer connections, privies, cesspools, and private sewers;
(u) Rain water and drainage conductors;
(v) Entrances and ramps; [and]
(w) Presence of lead-based paint hazards in multiple dwellings and in single-family and two-family dwellings, exclusive of owner-occupied dwelling units, subject to P.L.2003, c.311 (C.52:27D-437.1 et al.). In a common interest community, any inspection fee for and violation found within a unit which is solely related to this subsection shall be the responsibility of the unit owner and not the homeowners' association, unless the association is the owner of the unit; and
(x) Visible substantial presence of mold on any interior surface, including in ventilation ductwork, and the presence of conditions which contribute to that mold formation in multiple dwellings and in single-family and two-family dwellings, exclusive of owner-occupied dwelling units, subject to P.L. , c. (C. ) (pending before the Legislature as this bill). In a condominium, cooperative, or planned real estate development with common elements, any mold, or condition contributing to the formation of mold, which is not under the sole control of a unit owner and which in any manner concerns a common element or facility, shall be the duty of the homeowners’ association to remedy; any inspection fee for and violation found within a unit which is solely related to a condition caused by the owner within the individual unit shall be the sole responsibility of that unit owner and not the homeowners’ association, unless the homeowners’ association is the owner of the unit.

(cf: P.L.2007, c.251, s.5)

13. This act shall take effect immediately.

STATEMENT

Entitled the “Mold-Safe Housing Act,” this bill and a companion bill would create mechanisms for tenants living in mold-contaminated rental housing to have the mold effectively removed, or be relocated to safer rental housing. In addition, the bill provides a system of inspection of all rental housing for the presence of mold. Single family and two-family rental housing will be required to be inspected upon a change in occupancy, as well as every five years as part of the multiple dwelling inspection. Multiple dwellings will be inspected every five years for mold under the “Hotel and Multiple Dwelling Law,” which is enforced currently by the Bureau of Housing Inspection in the Department of Community Affairs.

The bill provides that a prospective home purchaser can specify that an inspection for presence of mold be performed by a licensed home inspector, should they retain such an inspector prior to purchase.

The bill permits tenants whose landlords fail to abate a mold hazard, upon written request to do so, to notify the Department of Community Affairs, who shall investigate each claim and determine whether to relocate the tenant. Current relocation assistance laws would apply in such circumstances. In addition, the bill requires the court to notify the department whenever a tenant is constructively convicted on account of mold or some other issue of habitability in the rental property.
Companion legislation to this bill creates standards for unsafe mold exposure levels, mold hazard abatement methods and certification of those professionals who will perform such work. Together, these bills form the framework of a protective process designed to identify and eliminate exposure in rental housing to mold, and to quickly remove tenants from harmful exposure to toxins that could impair their health for years to come.