

**PROPOSAL SECTION**

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendment**

**Uniform Construction Code**

**Proposed Changes: N.J.A.C. 5:23-3.4**

Proposed: January 19, 2021, at 53 N.J.R. 105(a).

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Submit written comments by: November 19, 2021, to:

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**Take notice** that the Department of Community Affairs (Department) proposed amendments at N.J.A.C. 5:23 on January 19, 2021, at 53 N.J.R. 105(a), to amend the delineation of responsibilities to code officials for solar energy at N.J.A.C. 5:23-3.4 and to specify in the rehabilitation subcode at N.J.A.C. 5:23-6 that an accessible means of egress is not required to be provided in existing buildings. The public comment period closed March 20, 2021.

The Department is proposing a number of substantive changes to the amendments at N.J.A.C. 5:23-3.4 in response to comments received. A summary of the comments received, and the agency response to those, is provided below. This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

**Summary of Public Comments and Agency Responses:**

Comments were received from Kenneth Krug, Electrical Subcode Committee Member, and Mitchell Malec, a former employee of the Department.

1. COMMENT: The commenter recommended that the Department revise the responsibilities portion of the Uniform Construction Code (UCC) at N.J.A.C. 5:23-3.4 to list in alphabetical order, those sections where multiple subcode officials are assigned plan review and/or inspection duties. The commenter indicated various sections of the code where such revisions might be made.

RESPONSE: The Department did undertake an effort to alphabetize all sections at N.J.A.C. 5:23-3.4 when it undertook the revisions proposed on March 2, 2020, and adopted on November 2, 2020. The Department thanks the commenter for noting that some sections were missed; however, the Department does not see a pressing need to further amend the chart to address these listings at this time, as the section responsibilities remain clear as adopted.

2. COMMENT: Two commenters expressed disagreement with the responsibilities assigned at sections 3111.2 and 3111.3.5 of the Building Subcode and sections R324.2 and R324.7 of the One- and Two-Family Dwelling Subcode and urged the Department to reconsider the assignments. The commenters' recommendations were as follows: "Considering that the

Electrical Subcode addresses electrical items of solar energy (PV) systems, the majority, if not all, of electrical items contained in other subcodes are adequately covered for plan review and inspection by the Electrical Subcode Official.

Building Subcode section 3111.2 references section 2606.12, the plumbing subcode, the IMC and the IFC. Chapter 26 of the Building Subcode has Building or Building/Fire for plan review responsibility and Building for inspection responsibility and section 2606.12 deals with plastic covers. In regard to equipment, section 3111.2.1 references ICC 900 and ICC 901. (It is recommended that the Department review these ICC references to see what the scope is and consider what subcode official plan reviews and inspects fluid system components or review Chapter 14 of the Mechanical Subcode.) Section R324.2 references Chapter 23, which is special piping and storage systems. (Summary - ‘... solar thermal energy systems relating to the plumbing code, as well as PV systems.’) It appears that assigning plan review and inspection responsibility of sections 3111.2 and R324.2 to the Plumbing Subcode Official (and including the Building Subcode and Fire Subcode Official in plan review) would be more appropriate and is recommended. (In addition, review assigned enforcement responsibilities of Chapter 14 (Solar Thermal Systems) of the Mechanical Subcode.) Or the Department may want to be a bit creative and further separate enforcement responsibilities of solar energy systems by thermal and photovoltaic systems.

Building Subcode section 3111.3.5 references Chapter 16 and the IFC. Chapter 16 is Structural Design and all of Chapter 16, except 1612.4 has plan review and inspection responsibility assigned to the Building Subcode Official. Also R324.7 refers to R301 which addresses building loads and is assigned to the Building Subcode Official for plan review and inspection. It appears that assigning plan review and inspection responsibility of section

3111.3.5 and R324.7 to the Building Subcode Official (and including the Fire Subcode Official in plan review) would be more appropriate and is recommended.”

RESPONSE: The Department agrees that the proposed responsibilities for solar thermal systems at Section 3111.2 of the building subcode and Section R324.2 of the one- and two-family dwelling subcode were assigned inappropriately. The Department also agrees that the proposed responsibilities for solar photovoltaic systems at Section 3111.3.5 of the building subcode was assigned inappropriately and agrees that the existing responsibility at Section R324.7 of the one- and two-family dwelling subcode needs to be reassigned to be consistent with this section of the building subcode. As such, the Department is proposing substantive changes to the solar energy systems sections to correct these assignments as noted by the commenter.

3. COMMENT: The commenter noted that section R321 of the One- and Two-Family Dwelling Subcode has been deleted and that the enforcement responsibilities currently assigned to R321 and its subsections are, therefore, unnecessary. Finally, the commenter recommended departmental review of section R326 of the One- and Two-Family Dwelling Subcode, stating, “It appears the ISPSC sections need to be relocated under R326 in lieu of after R327 sections (NJAC 5:23-3.4(a)6). Also the *International Swimming Pool and Spa Code* ISPSC sections noted may need to be changed along with assigned responsibilities due to amendments made to the ISPSC, other code sections, and the regulations. (2015 Code editions versus 2018 Code editions. Example - No ‘Exceptions’ in 2018 ISPSC section 305.1, so ‘(Except safety covers pursuant to Section 305.1, Exception 1 which shall be Electrical)’ needs correction.)”

RESPONSE: The Department agrees that further revision of the one- and two-family dwelling subcode responsibilities, along with the ISPSC, needs to be undertaken. Due to the amount of

time needed to fully undertake the revision, and in the interest of correcting this more substantive item first, these changes are not included as a part of the substantive changes requiring further public comment, as the Department intends to undertake separate rulemaking to address these sections.

### **Effect of Proposed Changes on Impact Statements Included in the Original Proposal**

The changes to the proposed amendment will not affect the impact statements included in the original rule proposal. Reassigning the plan review and inspection responsibilities for code officials does not affect the Social, Economic, Jobs, Agricultural Industry, or Racial and Ethnic Community Criminal Justice and Public Safety Impact Statements; the Regulatory Flexibility Analysis, Housing Affordability Impact Analysis, and Smart Growth Development Impact Analysis are similarly not affected by the proposed amendment.

**Full text** of the proposed substantial changes to the proposed amendments follows (additions to proposal indicated in italicized boldface *thus*; deletions from proposal indicated in italicized cursive brackets {thus}):

#### SUBCHAPTER 3. SUBCODES

##### 5:23-3.4 Responsibilities

(a) The enforcement responsibilities of the adopted subcodes are as follows:

##### 1. Building Subcode:

Chapter	Section/Title	Responsibility
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		Plan Review	Inspection
...			
Ch. 31	Special Construction		
...			
	[3111	Building/Fire	Fire]
	<b>3111.1</b>	<b>Building</b>	<b>Building</b>
	<b>3111.2</b>	<i>{Electrical/Fire/Plumbing}</i> <b><i>Building/Fire/Plumbing</i></b>	<i>{Electrical}</i> <b><i>Plumbing</i></b>
...			
	<b>3111.3.1</b>	<b>Electrical</b>	<b>Electrical</b>
	<b>3111.3.2</b>	<b>Building</b>	<b>Building</b>
	<b>3111.3.3</b>	<b>Building</b>	<b>Building</b>
	<b>3111.3.4</b>	<b>Fire</b>	<b>Fire</b>
	<b>3111.3.5</b>	<i>{Electrical/Fire}</i> <b><i>Building/Fire</i></b>	<i>{Electrical}</i> <b><i>Building</i></b>
	<b>3111.3.5.1</b>	<b>Building/Fire</b>	<b>Building</b>
	<b>3112</b>	<b>Building</b>	<b>Building</b>
...			

2.-5. (No change.)

6. One- and Two-Family Dwelling Subcode

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
...			
Ch. 3	Building Planning		
	<b>R324.2</b>	<i>{Electrical/Fire/Plumbing}</i> <b><i>Building/Fire/Plumbing</i></b>	<i>{Electrical}</i> <b><i>Plumbing</i></b>
...			
	<b>R324.7</b>	<i>{Electrical/Fire}</i> <b><i>Building/Fire</i></b>	<i>{Electrical}</i> <b><i>Building</i></b>
...			

7.-9. (No change.)

(b)-(d) (No change.)