

ACTS
OF THE
Second Annual Session
OF THE
Two Hundred and Tenth Legislature
OF THE
STATE OF NEW JERSEY



2003

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CHAPTER 141

AN ACT establishing a per diem base pay of \$100 for members of the National Guard called to State active duty and amending N.J.S.38A:4-3.

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

1. N.J.S.38A:4-3 is amended to read as follows:

Pay, allowances; \$100 daily minimum for State active duty.

38A:4-3. a. An officer or enlisted member ordered to State active duty shall receive the pay and allowances prescribed by Federal laws and regulations for an officer or enlisted member of corresponding grade and length of service when on Federal active duty, provided that an officer or enlisted member of the Army National Guard or Air National Guard shall be paid a minimum of \$100 of base pay for each day the officer or member is on State active duty.

b. Notwithstanding subsection a. of this section, the State shall not provide pay and allowances for State active duty service when pay and allowances for such service is provided out of Federal funds, unless Federal funds are insufficient to provide an officer or enlisted member with the minimum of \$100 for each day of State active duty service. This provision shall not limit or restrict the applicability of 38A:4-4 to individuals detailed to the Department of Defense in a permanent duty status.

2. This act shall take effect on the first day of the second month following enactment.

Approved August 1, 2003.

CHAPTER 142

AN ACT providing coverage under the State Health Benefits Program for certain members of the National Guard and supplementing P.L.1961, c.49 (C.52:14-17.25 et seq.).

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

C.52:14-17.32n National Guard on State active duty, certain; SHBP coverage.

1. a. A qualified member of the organized militia, as defined in N.J.S.38A:1-1, and the member's dependents, as defined in section 2 of P.L.1961, c.49 (C.52:14-17.26), shall be eligible to participate in the State Health Benefits Program and be

covered under the "State managed care plan", as defined in section 2 of P.L. 1961, c.49 (C.52:14-17.26), in accordance with the law and rules governing the program and plan, except as otherwise provided by this act. Notwithstanding any other law to the contrary, a qualified member of the organized militia and the member's dependants shall be enrolled in NJ Plus.

A qualified member is a member who is called to State active duty by an order of the Governor issued pursuant to law, when the written order directly applicable to that member states that active duty shall be for a period of 30 days within a 35 consecutive day period, provided the member (1) is not a compensated, full-time appointed or elected public officer or employee of the State or any political subdivision thereof when called to active duty; (2) had employer-provided health care benefits coverage that was cancelled due to the member's military service or does not have employer-provided health care benefits coverage; and (3) is not covered for health care benefits under a program, plan or policy as a dependent of the member's spouse when called to active duty. For the limited purpose of this act, a qualified member shall be deemed a State employee, as defined in section 2 of P.L. 1961, c.49 (C.52:14-17.26).

The member may waive coverage provided pursuant to this section by notifying the Division of Pensions and Benefits in writing.

b. The Department of Military and Veterans' Affairs shall notify the Division of Pensions and Benefits of the members who are eligible for health care benefits coverage pursuant to this section, and shall notify the members themselves of the coverage provided, by whatever means deemed efficient and expeditious.

c. The State Health Benefits Program shall not provide coverage for health care services and supplies provided to a member or the member's dependents prior to first day of active duty. The department, or the member when so requested, shall provide to the division all information necessary on account of the member's coverage and to enroll the member's dependents pursuant to applicable law and regulations governing the program and plan. If information is not provided to the division in a timely manner, coverage shall commence only upon receipt by the division of all information deemed necessary by the division to provide the coverage. The division shall make such accommodation and provision for the addition of the member and the member's dependents to the program and plan as may be necessary under the circumstances.

d. The coverage provided pursuant to this section shall be extended for health care services and supplies commencing on the first day of active duty service until the last day of active duty service, provided the information requirements in subsection c. of this section are met in a timely manner.

e. The State shall be liable for the premium or periodic charges for the coverage for the qualified member and member's dependents, including the program's expenses for the administration of this section, in such amount as

determined and fixed by the State Health Benefits Commission. The commission shall annually certify to the State the cost for providing health care benefits coverage to qualified members and their dependents under this section. The State shall annually remit to the commission the amount certified at a time specified by the State Treasurer.

f. If a member or the member's dependents, or both, have health care benefits coverage, other than through the member's spouse, immediately preceding the call to active duty and that coverage continues, or is eligible to continue, during active duty status, the coverage provided pursuant to this section shall only be secondary to that primary coverage and shall not cover expenses which are covered, or which would be covered in the absence of coverage pursuant to this section, in whole or in part, by that prior existing coverage. If that coverage is terminated through the action or inaction of the member, the member's spouse or the member's employer, other than pursuant to terms and conditions in effect immediately preceding the call to active duty, the coverage under this section shall also terminate.

This section shall not be deemed to replace, supersede or modify health care benefits coverage received by the member, the member's spouse or dependents immediately preceding the call to active duty.

g. Health care benefits coverage shall be provided pursuant to this section only if the provision of such coverage by the State Health Benefits Program does not violate applicable federal statutes in a manner that would change the nature, governance or status of the program.

h. The Treasurer, in consultation with the Adjutant General, shall adopt regulations to effectuate the purposes of this act pursuant to the "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.), except that the Treasurer may immediately adopt regulations the Division of Pensions and Benefits deems necessary to implement the provisions of this act, upon the filing of such regulations with the Office of Administrative Law.

2. This act shall take effect immediately.

Approved August 1, 2003.

CHAPTER 143

AN ACT concerning vehicular homicide and amending N.J.S.2C:11-5.

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

1. N.J.S.2C:11-5 is amended to read as follows:

Death by auto or vessel.

2C:11-5. Death by auto or vessel.

a. Criminal homicide constitutes vehicular homicide when it is caused by driving a vehicle or vessel recklessly.

Proof that the defendant fell asleep while driving or was driving after having been without sleep for a period in excess of 24 consecutive hours may give rise to an inference that the defendant was driving recklessly. Proof that the defendant was driving while intoxicated in violation of R.S.39:4-50 or was operating a vessel under the influence of alcohol or drugs in violation of section 3 of P.L.1952, c.157 (C.12:7-46) shall give rise to an inference that the defendant was driving recklessly. Nothing in this section shall be construed to in any way limit the conduct or conditions that may be found to constitute driving a vehicle or vessel recklessly.

b. Except as provided in paragraph (3) of this subsection, vehicular homicide is a crime of the second degree.

(1) If the defendant was operating the auto or vessel while under the influence of any intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or with a blood alcohol concentration at or above the prohibited level as prescribed in R.S.39:4-50, or if the defendant was operating the auto or vessel while his driver's license or reciprocity privilege was suspended or revoked for any violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96, the defendant shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, during which the defendant shall be ineligible for parole.

(2) The court shall not impose a mandatory sentence pursuant to paragraph (1) of this subsection unless the grounds therefor have been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a preponderance of the evidence that the defendant was operating the auto or vessel while under the influence of any intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or with a blood alcohol concentration at or above the level prescribed in R.S.39:4-50 or that the defendant was operating the auto or vessel while his driver's license or reciprocity privilege was suspended or revoked for any violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), by the Director of the Division of Motor Vehicles pursuant to P.L.1982, c.85 (C.39:5-30a et seq.), or by the court for a violation of R.S.39:4-96. In making its findings, the court shall

take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

(3) Vehicular homicide is a crime of the first degree if the defendant was operating the auto or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

(a) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(b) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(c) driving through a school crossing as defined in R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under subparagraph (a) of this paragraph.

It shall be no defense to a prosecution for a violation of subparagraph (a) or (b) of this paragraph that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be a defense to a prosecution under subparagraph (a) or (b) of this paragraph that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

(4) If the defendant was operating the auto or vessel in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the defendant's license to operate a motor vehicle shall be suspended for a period of between five years and life, which period shall commence upon completion of any prison sentence imposed upon that person.

c. For good cause shown, the court may, in accepting a plea of guilty under this section, order that such plea not be evidential in any civil proceeding.

d. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for aggravated manslaughter under the provisions of subsection a. of N.J.S.2C:11-4.

As used in this section, "auto or vessel" means all means of conveyance propelled otherwise than by muscular power.

e. Any person who violates paragraph (3) of subsection b. of this section shall forfeit the auto or vessel used in the commission of the offense, unless the defendant can establish at a hearing, which may occur at the time of

sentencing, by a preponderance of the evidence that such forfeiture would constitute a serious hardship to the family of the defendant that outweighs the need to deter such conduct by the defendant and others. In making its findings, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information. Forfeiture pursuant to this subsection shall be in addition to, and not in lieu of, civil forfeiture pursuant to chapter 64 of this title.

2. This act shall take effect immediately.

Approved August 5, 2003.

CHAPTER 144

AN ACT establishing an Autism Medical Research and Treatment Fund, supplementing Title 52 of the Revised Statutes and amending R.S.39:5-41.

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

C.30:6D-62.2 "Autism Medical Research and Treatment Fund" established.

1. a. There is established in the Department of the Treasury a nonlapsing fund to be known as the "Autism Medical Research and Treatment Fund." This fund shall be the repository for moneys provided pursuant to subsection f. of R.S.39:5-41. Moneys deposited in the fund, and any interest earned thereon, shall be allocated to the Governor's Council for Medical Research and Treatment of Infantile Autism established pursuant to P.L.1999, c.105 (C.30:6D-56 et seq.), to support grants and contracts awarded under subsection a. of section 5 of P.L.1999, c.105 (C.30:6D-60), and any grants for pilot studies selected under subsection c. of section 6 of that P.L.1999, c.105 (C.30:6D-61), provided that, if federal funds are available for the purpose, the grantee or contractor shall, as a condition of receiving any such grant or contract from the fund, apply for an amount of federal funds in support of that grant or contract.

b. Any costs incurred by the department in the collection or administration of the fund may be deducted from the funds deposited therein, as determined by the Director of the Division of Budget and Accounting.

2. R.S.39:5-41 is amended to read as follows:

Fines, penalties; forfeitures, disposition of; exceptions.

39:5-41. a. All fines, penalties and forfeitures imposed and collected under authority of law for any violations of R.S.39:4-63 and R.S.39:4-64 shall be forwarded by the judge to whom the same have been paid to the proper financial officer of a county, if the violation occurred within the jurisdiction of that county's central municipal court, established pursuant to N.J.S.2B:12-1 et seq. or the municipality wherein the violation occurred, to be used by the county or municipality to help finance litter control activities in addition to or supplementing existing litter pickup and removal activities in the municipality.

b. Except as otherwise provided by subsection a. of this section, all fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, other than those violations in which the complaining witness is the director, a member of his staff, a member of the State Police, a member of a county police department and force or a county park police system in a county that has established a central municipal court, an inspector of the Board of Public Utilities, or a law enforcement officer of any other State agency, shall be forwarded by the judge to whom the same have been paid as follows: one-half of the total amount collected to the financial officer, as designated by the local governing body, of the respective municipalities wherein the violations occurred, to be used by the municipality for general municipal use and to defray the cost of operating the municipal court; and one-half of the total amount collected to the proper financial officer of the county wherein they were collected, to be used by the county as a fund for the construction, reconstruction, maintenance and repair of roads and bridges, snow removal, the acquisition and purchase of rights-of-way, and the purchase, replacement and repair of equipment for use on said roads and bridges therein. Up to 25% of the money received by a municipality pursuant to this subsection, but not more than the actual amount budgeted for the municipal court, whichever is less, may be used to upgrade case processing.

All fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, in which the complaining witness is a member of a county police department and force or a county park police system in a county that has established a central municipal court, shall be forwarded by the judge to whom the same have been paid to the financial officer, designated by the governing body of the county, for all violations occurring within the jurisdiction of that court, to be used for general county use and to defray the cost of operating the central municipal court.

Whenever any county has deposited moneys collected pursuant to this section in a special trust fund in lieu of expending the same for the purposes authorized by this section, it may withdraw from said special trust fund in any year an amount which is not in excess of the amount expended by the

county over the immediately preceding three-year period from general county revenues for said purposes. Such moneys withdrawn from the trust fund shall be accounted for and used as are other general county revenues.

c. (Deleted by amendment, P.L.1993, c.293.)

d. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. In addition, upon the forfeiture of bail, \$1 of that forfeiture shall be forwarded to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Body Armor Replacement" fund established pursuant to section 1 of P.L.1997, c.177 (C.52:17B-4.4). Beginning in the fiscal year next following the effective date of this act, the State Treasurer annually shall allocate from those moneys so forwarded an amount not to exceed \$400,000 to the Department of Personnel to be expended exclusively for the purposes of funding the operation of the "Law Enforcement Officer Crisis Intervention Services" telephone hotline established and maintained under the provisions of P.L.1998, c.149 (C.11A:2-25 et al.).

e. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Spinal Cord Research Fund" established pursuant to section 9 of P.L.1999, c.201 (C.52:9E-9). In order to comply with the provisions of Article VIII, Section II, paragraph 5 of the State Constitution, a municipal or county agency which forwards moneys to the State Treasurer pursuant to this subsection may retain an amount equal to 2% of the moneys which it collects pursuant to this subsection as compensation for its administrative costs associated with implementing the provisions of this subsection.

f. Notwithstanding the provisions of subsections a. and b. of this section, during the period beginning on the effective date of this act and ending five years thereafter, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Autism Medical

Research and Treatment Fund" established pursuant to section 1 of P.L.2003, c.144 (C.30:6D-62.2).

3. This act shall take effect on the 180th day following enactment.

Approved August 6, 2003.

CHAPTER 145

AN ACT concerning forfeiture of public office, amending N.J.S.2C:51-2 and repealing section 17-17 of P.L.1950, c. 210.

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

1. N.J.S.2C:51-2 is amended to read as follows:

Forfeiture of public office.

2C:51-2. Forfeiture of Public Office. a. A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office or position if:

(1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;

(2) He is convicted of an offense involving or touching such office, position or employment; or

(3) The Constitution so provides.

b. A court of this State shall enter an order of forfeiture pursuant to subsection a.:

(1) Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of such forfeiture pending a hearing on the merits at the time of sentencing; or

(2) Upon application of the county prosecutor or the Attorney General, when the forfeiture is based upon a conviction of an offense under the laws of another state or of the United States. An order of forfeiture pursuant to this paragraph shall be deemed to have taken effect on the date the person was found guilty by the trier of fact or pled guilty to the offense.

c. No court shall grant a stay of an order of forfeiture pending appeal of a conviction or forfeiture order unless the court is clearly convinced that

there is a substantial likelihood of success on the merits. If the conviction be reversed or the order of forfeiture be overturned, he shall be restored, if feasible, to his office, position or employment with all the rights, emoluments and salary thereof from the date of forfeiture.

Any official action taken by the convicted person on or after the date as of which a forfeiture of the person's office shall take effect shall, during a period of 60 days following the date on which an order of forfeiture shall have been issued hereunder, be voidable by the person's successor in office or, if the office of the person was that of member of the governing body of a county, municipality or independent authority, by that governing body.

d. In addition to the punishment prescribed for the offense, and the forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person convicted of an offense involving or touching on his public office, position or employment shall be forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions.

e. Any forfeiture or disqualification under subsection a., b. or d. which is based upon a conviction of a disorderly persons or petty disorderly persons offense may be waived by the court upon application of the county prosecutor or the Attorney General and for good cause shown.

f. Except as may otherwise be ordered by the Attorney General as the public need may require, any person convicted of an offense under section 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7, 2C:29-4, 2C:30-2, or 2C:30-3 of this Title shall be ineligible, either directly or indirectly, to submit a bid, enter into any contract, or to conduct any business with any board, agency, authority, department, commission, public corporation, or other body of this State, of this or one or more other states, or of one or more political subdivisions of this State for a period of, but not more than, 10 years from the date of conviction for a crime of the second degree, or five years from the date of conviction for a crime of the third degree. It is the purpose of this subsection to bar any individual convicted of any of the above enumerated offenses and any business, including any corporation, partnership, association or proprietorship in which such individual is a principal, or with respect to which such individual owns, directly or indirectly, or controls 5% or more of the stock or other equity interest of such business, from conducting business with public entities.

The State Treasurer shall keep and maintain a list of all corporations barred from conducting such business pursuant to this section.

g. In any case in which the issue of forfeiture is not raised in a court of this State at the time of a finding of guilt, entry of guilty plea or sentencing, a forfeiture of public office, position or employment required by this section may be ordered by a court of this State upon application of the county prosecutor or the Attorney General or upon application of the public officer

or public entity having authority to remove the person convicted from his public office, position or employment. The fact that a court has declined to order forfeiture shall not preclude the public officer or public entity having authority to remove the person convicted from seeking to remove or suspend the person from his office, position or employment on the ground that the conduct giving rise to the conviction demonstrates that the person is unfit to hold the office, position or employment.

Repealer.

2. Section 17-17 of P.L.1950, c.210 (C.40:69A-166) is hereby repealed.

C.2C:51-2.1 Applicability of act.

3. This act shall apply as follows:

a. Any person who forfeited or was disqualified from holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, by a court of competent jurisdiction, prior to the effective date of this act shall continue to be disqualified or continue to forfeit such office, position or employment.

b. Any person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, on the effective date of this act, shall be subject to disqualification or forfeiture of that public office, position, or employment only pursuant to N.J.S.2C:51-2 and not pursuant to a statute other than the criminal code.

4. This act shall take effect immediately.

Approved August 8, 2003.

CHAPTER 146

AN ACT concerning the beneficial use of dredged materials, and supplementing Title 58 of the Revised Statutes.

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

C.12:6B-9 Reuse of dredged materials for certain purposes.

1. a. Any dredged materials removed from the New York and New Jersey harbor area may be reused for a beneficial purpose, including, but not limited to, landfill cover for a sanitary landfill facility, contaminated site remediation, or construction fill, provided that the use of the dredged materials is otherwise

consistent with provisions of federal and State law, or any rule or regulation adopted pursuant thereto.

b. The Department of Transportation and the Department of Environmental Protection, and any other State department or agency, as appropriate, shall consider the beneficial use of dredged materials in any State-funded project, where appropriate, including, but not limited to, road construction projects and publicly funded site remediation projects.

2. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 147

AN ACT concerning the law enforcement powers of certain Department of Environmental Protection personnel and amending P.L.1977, c.167 and P.L.1983, c.324.

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

1. Section 1 of P.L.1977, c.167 (C.13:1A-6.1) is amended to read as follows:

C.13:1A-6.1 Power to arrest without warrant; law enforcement training program.

1. The Commissioner of the Department of Environmental Protection shall have the power to vest in the conservation officers of the Division of Fish and Wildlife and the park rangers and law enforcement operation officers of the Division of Parks and Forestry at all times the power to arrest without warrant any person violating any law of this State committed in their presence and bring the offender before any court having jurisdiction to receive the complaint of such violation. The Department of Environmental Protection, with the approval of the Attorney General, shall establish and maintain a suitable law enforcement training program for such personnel.

2. Section 21 of P.L.1983, c.324 (C.13:1L-21) is amended to read as follows:

C.13:1L-21 Power to arrest without warrant; authorization to carry firearm; law enforcement training program.

21. The commissioner of the department shall have the power to vest in State Park Rangers and other personnel of the department at all times the power to arrest without warrant any person violating any law of the State committed in their presence and bring the offender before any court having jurisdiction to receive the complaint of such violation. These personnel are

hereby authorized to carry firearms at all times. The department, with the approval of the Attorney General, shall establish and maintain a law enforcement training program for such personnel.

3. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 148

AN ACT concerning underground storage tank financing, and amending and supplementing P.L.1997, c.235.

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

1. Section 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to read as follows:

C.58:10A-37.2 Definitions relative to upgrade, remediation, closure of underground storage tanks.

2. As used in this act:

"Applicant" means a person who files an application for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for payment of eligible project costs of a remediation due to a discharge of petroleum from a petroleum underground storage tank and for payment of eligible project costs of an upgrade or closure of a regulated tank;

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

"Closure" means the proper closure or removal of a petroleum underground storage tank necessary to meet all regulatory requirements of federal, State, or local law;

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

"Discharge" means the intentional or unintentional release by any means of petroleum from a petroleum underground storage tank into the environment;

"Eligible owner or operator" means (1) any owner or operator, other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building, who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than \$2,000,000 and who demonstrates to the satisfaction of the authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs, or in the case of such an owner or operator

of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (C.52:18A-196 et seq.), who has a net worth of less than \$3,000,000 and who demonstrates to the satisfaction of the authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs,(2) the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building, (3) a public entity who owns or operates a petroleum underground storage tank in New Jersey, or (4) an independent institution of higher education that owns or operates a petroleum underground storage tank;

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade, or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. In the case of an upgrade or closure of a regulated tank, eligible project costs shall be limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of federal and State law. The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the fund as financial assistance shall be that amount that would represent the cost of a minimal effective system. In the case of a remediation of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building, eligible project costs shall include the cost to replace a leaking tank with an above-ground or underground storage tank. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for residential use. Eligible project costs shall include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the fund if the preliminary assessment and site investigation were performed after the effective date of P.L.1997, c.235;

"Facility" means one or more operational or nonoperational petroleum underground storage tanks under single ownership at a common site;

"Financial assistance" means a grant or loan or a combination of both that may be awarded by the authority from the fund to an eligible owner or operator as provided in section 5 of P.L.1997, c.235 (C.58:10A-37.5);

"Independent institution of higher education" means those institutions of higher education incorporated and located in this State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey. "Independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion;

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility;

"Owner" means any person who owns a facility;

"Person" means any individual, partnership, corporation, society, association, consortium, joint venture, commercial entity, or public entity, but does not include the State or any of its departments, agencies or authorities;

"Petroleum" means all hydrocarbons which are liquid at one atmosphere pressure (760 millimeters or 29.92 inches Hg) and temperatures between -20 F and 120 F (-29 C and 49 C), and all hydrocarbons which are discharged in a liquid state at or nearly at atmospheric pressure at temperatures in excess of 120 F (49 C) including, but not limited to, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oil, and purified hydrocarbons that have been refined, re-refined, or otherwise processed for the purpose of being burned as a fuel to produce heat or usable energy or which is suitable for use as a motor fuel or lubricant in the operation or maintenance of an engine;

"Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund" or "fund" means the fund established pursuant to section 3 of P.L. 1997, c.235 (C.58:10A-37.3);

"Petroleum underground storage tank" means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment, that normally and primarily stores petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground. "Petroleum underground storage tank" does not include:

(1) Septic tanks installed or regulated pursuant to regulations adopted by the department pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.) or the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);

(2) Pipelines, including gathering lines, regulated under 49 U.S.C. s.60101 et seq., or intrastate pipelines regulated under State law;

(3) Surface impoundments, pits, ponds, or lagoons, operated in or regulated pursuant to regulations adopted by the department pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);

(4) Storm water or wastewater collection systems operated or regulated pursuant to regulations adopted by the department pursuant to the "Water Pollution Control Act";

(5) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(6) Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered so as to allow visual inspection of the exterior of the tank; and

(7) Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this definition pursuant to paragraphs (1) through (6) above;

"Public entity" means any county, municipality, or public school district, but shall not include any authority created by those entities;

"Regulated tank" means a petroleum underground storage tank that is required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq.;

"Remediation" means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of petroleum, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1);

"Upgrade" means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention therefor, or any other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and 42 U.S.C. s.6991 et seq.

2. Section 4 of P.L.1997, c.235 (C.58:10A-37.4) is amended to read as follows:

C.58:10A-37.4 Allocation of fund; priorities.

4. a. Monies in the fund shall be allocated and used to provide financial assistance only to (1) eligible owners or operators of regulated tanks in this State in order to finance the eligible project costs of the upgrade or closure

of those regulated tanks as may be required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.); and (2) eligible owners and operators of petroleum underground storage tanks in this State in order to finance the eligible project costs of remediations that are necessary due to the discharge of petroleum from one or more of those petroleum underground storage tanks. Priority for the issuance of financial assistance from the fund, and the terms and conditions of that financial assistance, shall be based upon the criteria set forth in this section.

b. Upon a determination that an application for financial assistance meets all established criteria for the award of financial assistance from the fund, the authority shall approve the application. Prior to December 22, 1998, the authority may approve only those applications given priority pursuant to paragraphs (1) and (2) of this subsection or pursuant to subsections c. and f. of this section, but the authority may receive, file, and deem complete any application for financial assistance it receives prior to that date.

Upon the authority's approval of an application for financial assistance, the authority shall award financial assistance to an applicant upon the availability of sufficient monies in the fund. When monies in the fund are not sufficient at any point in time to fully fund all applications for financial assistance that have been approved by the authority, the authority shall award financial assistance to approved applicants, notwithstanding the date of approval of the application, in the following order of priority:

(1) Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. s.6991 et seq., and including any necessary remediation at the site of the regulated tank, shall be given first priority;

(2) Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. s.6991 et seq., and including any necessary remediation at the site of the regulated tank, shall be given second priority;

(3) Upgrades of regulated tanks required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42 U.S.C. s.6991 et seq., and including any necessary remediation at the site of the regulated tank, shall be given third priority;

(4) Any necessary remediations at the sites of petroleum underground storage tanks other than those given priority pursuant to paragraph (1), (2), or (3) of this subsection shall be given fourth priority;

(5) Closure of any regulated tank required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42 U.S.C. s.6991 et seq., shall be given last priority.

c. Notwithstanding the priority for the award of financial assistance set forth in subsection b. of this section, whenever there has been a discharge, and the discharge poses a threat to a drinking water source, to human health, or to a sensitive or significant ecological area, an approved application for

the award of financial assistance for the remediation and upgrade or closure, if necessary, shall be given priority over all other applications for financial assistance.

d. The priority ranking of applicants within any priority category enumerated in paragraphs (1), (2), (3), (4), and (5) of subsection b. and in subsection c. of this section shall be based upon the date an application for financial assistance is filed with the authority as determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6).

e. Whenever a facility consists of petroleum underground storage tanks from more than one priority category as enumerated in paragraphs (1) through (5) of subsection b. of this section, and subsection c. of this section, all the petroleum underground storage tanks at that facility shall be accorded the priority that would be accorded the highest priority petroleum underground storage tank at that facility.

f. Notwithstanding the priority rankings established in this section, one-tenth of the amount annually appropriated to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund shall be used to provide financial assistance to owners or operators of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building, in order to finance the eligible project costs of remediations that are necessary due to the discharge of heating oil from those petroleum underground storage tanks. The authority shall provide financial assistance pursuant to this subsection notwithstanding the owner or operator's ability to obtain commercial loans for all or part of the financing. The priority ranking of applicants for these funds shall be based upon the date an application for financial assistance is filed with the authority as determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6). If the authority does not receive qualified applications for financial assistance from owners and operators of petroleum underground storage tanks used to store heating oil for onsite consumption that meet the criteria set forth in this act and in any rules or regulations issued pursuant thereto, sufficient to enable the award of financial assistance an amount equal to one-tenth of the amount annually appropriated to the fund in any one year as required pursuant to this subsection, the authority may award that financial assistance in the order of priority as provided in this section. In addition to the monies dedicated pursuant to this subsection, the authority may award financial assistance to an owner or operator of a petroleum underground storage tank used to store heating oil for onsite consumption when the criteria enumerated in subsection c. of this section are met.

3. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to read as follows:

C.58:10-37.5 Awarding of financial assistance.

5. a. (1) The authority may award financial assistance from the fund to an eligible owner or operator in the form of a loan or a conditional hardship grant as provided in this section. An award of financial assistance, either as a loan or a grant, or a combination of both, may, upon application therefor, be for 100% of the eligible project costs. However, a loan that any applicant may receive from the fund for an upgrade, remediation, or closure, or any combination thereof, for any one facility, may not exceed \$2,000,000, except as provided below, and a grant that any applicant may receive from the fund for any one facility, may not exceed \$500,000. A loan that an applicant may receive from the fund for a remediation of a discharge that poses a threat to a drinking water source may not exceed \$3,000,000.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), may receive a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$750,000 for each facility so located.

b. A public entity applying for financial assistance from the fund may only be awarded financial assistance in the form of an interest free loan.

c. An applicant, other than a public entity, may apply for and receive a conditional hardship grant for the upgrade, closure or remediation as provided in paragraph (1) of this subsection, or a loan for an upgrade, closure or remediation as provided in paragraph (2) of this subsection, provided that an applicant for a conditional hardship grant or a loan for an upgrade may be eligible for financial assistance only for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building that has received an extension of the deadline for compliance with the standards pursuant to subsection b. of section 9 of P.L.1986, c.102 (C.58:10A-29). Financial assistance awarded an applicant pursuant to this subsection may consist entirely of a conditional hardship grant, a loan for an upgrade, a loan for a closure, or a loan for a remediation, or any combination thereof, except that the total amount of the award of financial assistance shall be subject to the per facility dollar limitation enumerated in subsection a. of this section. Notwithstanding any other provision of this subsection to the contrary, no tax exempt, nonprofit organization, corporation, or association shall be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection, provided that an independent institution of higher education, a nonprofit organization, corporation, or association with not more than 100 paid individuals that is qualified for exemption from federal taxation pursuant to section 501 (c)(3) of the federal Internal Revenue Code,

26 U.S.C. s.501 (c)(3), or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad, may be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection.

(1) A conditional hardship grant for eligible project costs of an upgrade, closure or remediation shall be awarded by the authority based upon a finding of eligibility and financial hardship and upon a finding that the applicant meets the criteria set forth in this act.

In order to be eligible for a conditional hardship grant for closure or upgrade, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank as of December 1, 2002 and continually thereafter or shall have inherited the property from a person who owned the regulated tank as of that date. In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank at the time of tank closure. No applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than \$200,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$200,000.

Notwithstanding the eligibility requirements for net worth and income, an independent institution of higher education, a nonprofit organization, corporation, or association with not more than 100 paid individuals that is qualified for exemption from federal taxation pursuant to section 501 (c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3), or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad shall be eligible for a conditional hardship grant for eligible project costs of a closure or remediation of a petroleum underground storage tank.

A finding of financial hardship by the authority shall be based upon a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the authority determines the applicant cannot reasonably be expected to repay.

In making a finding of financial hardship for an application for the upgrade, closure, or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is a part of the business property of the owner, the authority shall base its finding upon the cash flow of the applicant's business, whether or not any part of the applicant's business is related to the ownership or operation of that petroleum underground storage tank. In making a finding of financial hardship for an application for the upgrade or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is not a part of the business property of the owner, the authority shall base its finding upon the applicant's taxable income in the year prior to the date of the application being submitted.

If the authority awards a conditional hardship grant in combination with a loan pursuant to this subsection, the authority shall release to the applicant the loan monies prior to the release of the conditional hardship grant monies.

Conditional hardship grants awarded to an applicant shall be subject to the lien provisions enumerated in section 16 of P.L.1997, c.235 (C.58:10A-37.16).

(2) A loan to an eligible owner or operator for the eligible project costs of an upgrade, closure, or remediation shall be awarded by the authority only upon a finding that the applicant other than a public entity is able to repay the amount of the loan.

In making a finding of an applicant's ability to repay a loan for the upgrade, closure, and remediation of a regulated tank, or for the remediation of a discharge from a petroleum underground storage tank, the authority shall base its finding, as applicable, upon the cash flow of the applicant's business, the applicant's taxable income and the applicant's personal and business assets, except that the authority may not consider the applicant's primary residence as collateral, except that the authority may consider the applicant's primary residence as collateral with the permission of the applicant or where the subject petroleum underground storage tank or regulated tank is located at the primary residence.

d. The authority shall, where applicable, require an applicant applying for financial assistance from the fund to submit to the authority the financial statements of the applicant's business for three years prior to the date of the application, the most recent interim financial statement for the year of the application, the applicant's federal income tax returns, or other relevant documentation.

e. Nothing in this section is intended to alter the priority or criteria for awarding financial assistance established pursuant to section 4 of P.L.1997, c.235 (C.58:10A-37.4).

f. An eligible owner or operator may only be awarded that amount of financial assistance issued as a loan for which the applicant demonstrates he could not qualify for and obtain as a commercial loan. The provisions of this subsection shall not apply to an owner or operator of petroleum underground storage tank used to store heating oil for onsite consumption in a residential building, to an independent institution of higher education, or to a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.

4. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to read as follows:

C.58:10A-37.6 Application for financial assistance; fee.

6. An eligible owner or operator seeking financial assistance from the fund shall file an application on a form to be developed by the authority. The application form shall be submitted with the application fee. The application fee per facility for residential petroleum underground storage tanks shall be \$250. The authority may establish the application fee per facility for nonresidential petroleum underground storage tanks.

The authority shall adopt rules and regulations listing the filing requirements for a complete application for financial assistance. If a financial assistance application is determined to be incomplete by the authority, an applicant shall have 30 days from the date of receipt of written notification of incompleteness to file such additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within the 30 days, the filing date for that application shall be the date that such additional information is received by the authority. If the additional information is filed within the 30 days and is satisfactory to the authority, the filing date for that application shall be the initial date of application with the authority. Notwithstanding the above, if a completed application has been submitted and the applicant fails to submit the filing fee, then the filing date for the application shall not be established until the date on which the authority receives the application fee. A change in the filing date resulting from failure to submit a completed application or from failure to submit the application fee in a timely fashion for applications filed for financial assistance for a regulated tank to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) or for the remediation of a discharge from any such regulated tank shall not render the application ineligible for financial assistance as long as the initial date of application is prior to June 30, 2005, or for a regulated tank that is not operational, 18 months from the date of discovery of the tank or 18 months from the effective date of P.L.2003, c.148, whichever is later .

An applicant shall have 120 days from receipt of notice of approval of a financial assistance award to submit to the authority an executed contract for the upgrade, closure, or remediation, or all three, as the case may be, that is consistent with the terms and conditions of the financial assistance approval. Failure to submit an executed contract within the allotted time, without good cause, may result in an alteration of an applicant's priority ranking.

5. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to read as follows:

C.58:10A-37.7 Conditions for awarding financial assistance.

7. a. The authority shall award financial assistance to an owner or operator of a facility only if the facility is properly registered with the department pursuant

to section 3 of P.L.1986, c.102 (C.58:10A-23), where applicable, and if all fees or penalties due and payable on the facility to the department pursuant to P.L.1986, c.102 have either been paid or the nature or the amount of the fee or penalty is being contested in accordance with law.

b. The authority may deny an application for financial assistance, and any award of financial assistance may be recoverable by the authority, upon a finding that:

(1) in the case of financial assistance awarded for a remediation, the discharge was proximately caused by the applicant's knowing conduct;

(2) in the case of financial assistance awarded for a remediation, the discharge was proximately caused or exacerbated by knowing conduct by the applicant with regard to any lawful requirement applicable to petroleum underground storage tanks intended to prevent, or to facilitate the early detection of, the discharge;

(3) the applicant failed to commence or complete a remediation, closure, or an upgrade for which an award of financial assistance was made within the time required by the department in accordance with the applicable rules and regulations, within the time prescribed in an administrative order, an administrative consent agreement, a memorandum of agreement, or a court order; or

(4) the applicant provided false information or withheld information on a loan or grant application, or other relevant information required to be submitted to the authority, on any matter that would otherwise render the applicant ineligible for financial assistance from the fund, that would alter the priority of the applicant to receive financial assistance from the fund, that resulted in the applicant receiving a larger grant or loan award than the applicant would otherwise be eligible, or that resulted in payments from the fund in excess of the actual eligible project costs incurred by the applicant or the amount to which the applicant is legally eligible.

Nothing in this subsection shall be construed to require the authority to undertake an investigation or make any findings concerning the conduct described in this subsection.

c. An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Once financial assistance for an upgrade or closure is awarded for a facility, no additional award of financial assistance for upgrade or closure costs may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations

enumerated in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with the rules and regulations of the department.

d. Except as provided below, no financial assistance for upgrade shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), unless the application is filed with the authority prior to January 1, 1999 and the application is complete and the application fee is received by August 1, 1999. No financial assistance for upgrade shall be awarded for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq., unless the applicant has received an extension of the deadline for compliance with the standards pursuant to subsection b. of section 9 of P.L.1986, c.102 (C.58:10A-29), the application is filed with the authority prior to June 30, 2005 and the application is complete and the application fee is received by December 31, 2005.

No financial assistance for closure shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to June 30, 2005 and the application is complete and the application fee is received by December 31, 2005.

In the case of a regulated tank that is not operational, financial assistance for the closure or the remediation of any discharge therefrom may be awarded if the application is filed with the authority no more than 18 months after the date of discovery of the existence of the regulated tank, or 18 months from the effective date of P.L.2003, c.148, whichever is later.

e. The date of occurrence of a discharge shall not affect eligibility for financial assistance from the fund. Except for a preliminary assessment or a site investigation performed after the effective date of P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in subsections g. through j. of this section, no award of financial assistance shall be made from the fund for the otherwise eligible project costs of a remediation, closure, or an upgrade, or parts thereof, completed prior to an award of financial assistance from the fund.

f. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if

financial assistance from the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) has previously been made for a remediation at that site as a result of a discharge from that petroleum underground storage tank. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if the discharge began subsequent to the completion of an upgrade of that petroleum underground storage tank, which upgrade was intended to meet all applicable upgrade regulations of the department, no matter when the upgrade was performed.

g. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed an application for financial assistance from the fund, and there are either insufficient monies in the fund or the authority has not yet acted upon the application or awarded the financial assistance, the eligible owner or operator may expend its own funds for the upgrade, closure, or remediation, and upon approval of the application, the authority shall award the financial assistance as a reimbursement of the monies expended for eligible project costs.

h. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the eligible owner or operator for the eligible project costs of the remediation.

i. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is an independent institution of higher education has expended the applicant's own funds on a remediation prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed \$500,000 for each independent institution of higher education.

j. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has expended the applicant's own funds for a remediation of a petroleum underground storage tank used to store heating oil at the applicant's primary residence prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235

(C.58:10A-37.5) to reimburse the applicant for the eligible project costs of the remediation.

6. Section 24 of P.L.1997, c.235 (C.58:10A-37.23) is amended to read as follows:

C.58:10A-37.23 Submission of evidence of financial responsibility.

24. Prior to July 1, 1997, or upon completion of the upgrade of an underground storage tank as required pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), the owner or operator of that underground storage tank shall submit to the department evidence of financial responsibility for taking corrective action and compensating third parties as is required pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et seq. The department may require that evidence of financial responsibility be submitted prior to the last disbursement of financial assistance from the fund. After a regulated tank is upgraded, the New Jersey Spill Compensation Fund, created pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) shall no longer serve as the evidence of financial responsibility for the regulated tank.

7. Within 12 months of the effective date of this act, the Department of Environmental Protection shall conduct a public education and information program to inform owners and operators of petroleum underground storage tanks of the changes in the eligibility criteria, changes in the grant and loan limits and changes in the application deadlines adopted pursuant to this act. The public education program shall, among other things, inform those owners or operators of regulated tanks that have not closed or upgraded their tanks, and any person whose application for financial assistance from the fund has been denied because of the failure to meet the previous application deadline of the changes adopted pursuant to this act.

8. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 149

AN ACT concerning the Trenton War Memorial, amending P.L.1988, c.116 and repealing section 6 of that act.

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

1. Section 1 of P.L.1988, c.116 (C.52:18A-212) is amended to read as follows:

C.52:18A-212 Findings, declarations relative to the Trenton War Memorial.

1. The Legislature finds and declares that the Trenton War Memorial building is a cultural, historic and artistic asset to the citizens of New Jersey and is used for activities, performances and official convocations by organizations, groups and public agencies from throughout the State. The promotion, operation, restoration and maintenance of the War Memorial building is, therefore, in the public interest of the State and the best means to achieve this end is by ownership and operation of the building and lands by the State. It is also in the public interest of the State that the use privileges accorded veterans' organizations to space within the facility prior to the effective date of P.L.2003, 149 will be continued.

The Legislature also finds and declares that the State will have the ability to present and promote programs of its own selection at the War Memorial building in order to make the facility's schedule of events more responsive to the interests of State, local and regional residents while not limiting use of the facility by New Jersey organizations, community groups and public agencies.

2. Section 2 of P.L.1988, c.116 (C.52:18A-213) is amended to read as follows:

C.52:18A-213 Title vested in State.

2. Title or interest in any lands, buildings, facilities, furnishings or equipment heretofore acquired by, conveyed or transferred to, the Trenton and Mercer County Memorial Building Commission established pursuant to R.S.40:10-3 et seq., repealed, shall be vested in the State of New Jersey and, notwithstanding any other provision of law to the contrary, the State shall hold title or interest therein, and shall be the owner thereof.

3. Section 3 of P.L.1988, c.116 (C.52:18A-214) is amended to read as follows:

C.52:18A-214 Jurisdiction of the Department of the Treasury; Department of State.

3. The Trenton War Memorial shall fall within the jurisdiction of the Department of the Treasury for the purposes of restoration, repair and maintenance of the facility, including the lands and improvements incident thereto. The Trenton War Memorial shall fall within the jurisdiction of the

Department of State for purposes of operating the facility and promoting and presenting programs at the facility that will advance the cultural, artistic and ceremonial needs and interests of the citizens of the State, consistent with the Legislature's findings and declarations set forth in section 1 of P.L. 1988, c.116 (C.52:18A-212). In the execution of their responsibilities, the Department of the Treasury and the Department of State, consistent with the scope of their respective jurisdictions, shall be empowered to contract with qualified entities, which may include, but not be limited to other departments, agencies or authorities of the State, independent contractors, nonprofit corporations, professional management firms, artists, performers, agents representing artists and performers, associated vendors and other individuals possessing expertise of the type necessary to assure the well-being of the facility and the accomplishment of the purposes and objectives set forth in P.L. 1988, c.116 (C.52:18A-212 et seq.).

4. Section 4 of P.L. 1988, c.116 (C.52:18A-215) is amended to read as follows:

C.52:18A-215 Funds; fees; uses.

4. a. Any entity may, with the written authorization of the Secretary of State and written notice to the State Treasurer, solicit and raise funds and accept funds from any public or private source for any of the purposes and objectives set forth in P.L. 1988, c.116 (C.52:18A-212 et seq.). The State or any political subdivision of the State may appropriate moneys to the Department of State or any other department, agency or authority for such purposes or objectives which may include otherwise eligible general obligation bond funds. Any entity authorized under P.L. 1988, c.116 (C.52:18A-212 et seq.) to contract for the management of the facility may, with the written approval of the State Treasurer and the Secretary of State, levy fees or charges for the use of the facility.

b. All proceeds received by the Department of State from operation of the Trenton War Memorial and presentation of programs at the Trenton War Memorial, as well as all moneys received from fund-raising activities, donations, appropriations, or fees and charges shall be immediately deposited into the War Memorial Fund established by section 5 of P.L. 1988, c.116 (C.52:18A-216), and disbursed for costs associated with any purpose or objective provided by P.L. 1988, c.116 (C.52:18A-212 et seq.), including, but not limited to the presentation of other performing arts programs, performers' fees, advertising and promotion, equipment purchase and rental, stage workers, ushers, ticket takers and security, unless the State Treasurer provides for alternative treatment of those funds.

Repealer.

5. Section 6 of P.L.1988, c.116 (C.52:18A-217) is repealed.
6. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 150

AN ACT concerning certain local public contracts, supplementing and amending P.L.1971, c.198.

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

C.40A:11-15.3 Contract for marketing of recyclable materials.

1. a. Notwithstanding the provisions of section 15 of P.L.1971, c.198 (C.40A:11-15) to the contrary, a county government contracting unit may enter into or extend a contract for the marketing of recyclable materials recovered through a recycling program subject to the following conditions:

(1) The program includes one or more interlocal services agreements with municipalities in that county for the delivery of recyclable materials to a contractor; and

(2) The contract for the marketing of recyclable material includes fixed or formula based fees for the marketing services so provided and the contractor owns the buildings and equipment necessary to perform the contract.

b. Whenever an existing contract satisfies the conditions contained in subsection a. of this section, the contract may be extended for a period of up to 10 years; however, the length of the existing contract together with any extension thereof shall not exceed a total of 12 years. A new contract for the marketing of recyclable materials shall not exceed 10 years. Notwithstanding the provisions of section 5 of P.L.1971, c.198 (C.40A:11-5) to the contrary, a new contract for the marketing of recyclable materials for a term exceeding five years shall be entered into pursuant to public bidding or competitive contracting.

2. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read as follows:

C.40A:11-5 Exceptions.

5. Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if:

(1) The subject matter thereof consists of:

(a) (i) Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit; or (ii) Extraordinary unspecifiable services. The application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of such contract;

(b) The doing of any work by employees of the contracting unit;

(c) The printing of legal briefs, records and appendices to be used in any legal proceeding in which the contracting unit may be a party;

(d) The furnishing of a tax map or maps for the contracting unit;

(e) The purchase of perishable foods as a subsistence supply;

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;

(g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;

(h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;

(i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

(j) The publishing of legal notices in newspapers as required by law;

(k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;

(l) Those goods and services necessary or required to prepare and conduct an election;

(m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

(n) The doing of any work by handicapped persons employed by a sheltered workshop;

(o) The provision of any goods or services including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;

(p) (Deleted by amendment, P.L.1999, c.440.)

(q) Library and educational goods and services;

(r) On-site inspections undertaken by private agencies pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

(s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;

(t) (Deleted by amendment, P.L.1999, c.440.)

(u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;

(v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C.s.796;

(w) The purchase of electricity or administrative or dispatching services directly related to the transmission of such purchased electricity by a contracting unit engaged in the generation of electricity;

(x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;

(y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to P.L.1989, c.109 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no later than six months after the effective date of P.L.1993, c.381;

(z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

(aa) The cooperative marketing of recyclable materials recovered through a recycling program;

(bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

(cc) Expenses for travel and conferences;

(dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

(ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;

(ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

(hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.

(2) It is to be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency or authority thereof or any other state or subdivision thereof.

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been

independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;

(ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

(iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to subsection (3) of this section it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

(4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution

by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing such a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

3. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to read as follows:

C.40A:11-15 Duration of certain contracts.

15. All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to exceed 12 consecutive months. Contracts may be awarded for longer periods of time as follows:

- (1) Supplying of:
 - (a) (Deleted by amendment, P.L.1996, c.113.)
 - (b) (Deleted by amendment, P.L.1996, c.113.)
 - (c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;
- (2) (Deleted by amendment, P.L.1977, c.53.)
- (3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;
- (4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);
- (5) Data processing service, for any term of not more than seven years;
- (6) Insurance, including the purchase of insurance coverages, insurance consulting or administrative services, claims administration services and including participation in a joint self-insurance fund, risk management program or related services provided by a contracting unit insurance group, or participation in an insurance fund established by a local unit pursuant to

N.J.S.40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed five years; provided, however, such contracts shall be awarded only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services for a term not exceeding five years;

(9) Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding three years;

(11) On-site inspections and plan review services undertaken by private agencies pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more than three years;

(12) The provision or performance of goods or services for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; provided, however, that such contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings;

(13) (Deleted by amendment, P.L.1999, c.440.)

(14) (Deleted by amendment, P.L.1999, c.440.)

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed ten years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except that no such approvals shall be required for those

contracts otherwise exempted pursuant to subsection (30), (31), (34), (35) or (43) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of resource recovery services by a qualified vendor, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, and the Department of Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et al.); and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production; and "residual ash" means the bottom ash, fly ash, or any combination thereof, resulting from the combustion of solid waste at a resource recovery facility;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (36) or (43) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of goods or services for the purpose of lighting public streets, for a term not to exceed five years;

(21) The provision of emergency medical services for a term not to exceed five years;

(22) Towing and storage contracts, awarded pursuant to paragraph u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for any term not exceeding three years;

(23) Fuel for the purpose of generating electricity for a term not to exceed eight years;

(24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a public utility company subject to the jurisdiction of the Board of Public Utilities, a similar regulatory

body of another state, or a federal regulatory agency, or from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24, 1991, for a term not to exceed 40 years;

(25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;

(26) (Deleted by amendment, P.L. 1999, c. 440.)

(27) The provision of transportation services to elderly, disabled or indigent persons for any term of not more than three years. For the purposes of this subsection, "elderly persons" means persons who are 60 years of age or older. "Disabled persons" means persons of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent persons" means persons of any age whose income does not exceed 100 percent of the poverty level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

(28) The supplying of liquid oxygen or other chemicals, for a term not to exceed five years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the contracting unit;

(29) The performance of patient care services by contracted medical staff at county hospitals, correction facilities and long term care facilities, for any term of not more than three years;

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L. 1993, c. 381 (C.58:28-2), or a contract entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no later than January 7, 1995, for any term of not more than forty years;

(31) The provision of water supply services or the financing, construction, operation or maintenance or any combination thereof, of a water supply facility or any component part or parts thereof, by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L. 1993, c. 381 (C.58:28-2), for a period not to exceed 40 years;

(32) Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance

and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

(34) A contract between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water supply services may be entered into for any term which, when all optional extension periods are added, may not exceed 40 years;

(35) A contract for the purchase of a supply of water from a public utility company subject to the jurisdiction of the Board of Public Utilities in accordance with tariffs and schedules of charges made, charged or exacted or contracts filed with the Board of Public Utilities, for any term of not more than 40 years;

(36) A contract between a public entity and a private firm or public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the provision of wastewater treatment services may be entered into for any term of not more than 40 years, including all optional extension periods;

(37) The operation and management of a facility under a license issued or permit approved by the Department of Environmental Protection, including a wastewater treatment system or a water supply or distribution facility, as the case may be, for any term of not more than ten years. For the purposes of this subsection, "wastewater treatment system" refers to facilities operated or maintained for the storage, collection, reduction, disposal, or other treatment of wastewater or sewage sludge, remediation of groundwater contamination, stormwater runoff, or the final disposal of residues resulting from the treatment of wastewater; and "water supply or distribution facility" refers to facilities operated or maintained for augmenting the natural water resources of the State, increasing the supply of water, conserving existing water resources, or distributing water to users;

(38) Municipal solid waste collection from facilities owned by a contracting unit, for any term of not more than three years;

(39) Fuel for heating purposes, for any term of not more than three years;

(40) Fuel or oil for use in motor vehicles for any term of not more than three years;

(41) Plowing and removal of snow and ice for any term of not more than three years;

(42) Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities or other contracting units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to exceed the term of that contract;

(43) A contract between the governing body of a city of the first class and a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of this section, or wastewater treatment

services as defined in subsection (19) of this section, may be entered into for a period not to exceed 40 years;

(44) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contacting unit for any term not exceeding 25 years.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. The contract shall be awarded by resolution of the governing body upon a finding by the governing body that the services are being performed in an effective and efficient manner; b. No such contract shall be extended so that it runs for more than a total of five consecutive years; c. Any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. The terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts for the provision or performance of goods or services or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36), (37) or (43) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above and contracts for the purchase of electricity generated from a power production facility that is fueled by methane gas authorized pursuant to subsection (44) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services in the Department of Community Affairs shall adopt and promulgate rules and regulations concerning

the methods of accounting for all contracts that do not coincide with the fiscal year.

All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be extended by mutual agreement of the parties to the contract when a contracting unit has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

4. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 151

AN ACT concerning horse racing, amending P.L. 1971, c.137, supplementing P.L. 1940, c.17 (C.5:5-22 et seq.) and repealing section 2 of P.L. 1984 c.24 (C.5:5-43.1).

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

C.5:5-25.1 Regulations relative to commission member, employee.

1. a. No member or employee of the commission shall hold any direct or indirect interest in, or be employed by, any applicant for or holder of a permit or license issued by the commission for a period of two years commencing at the termination of membership on or employment with the commission, except that a secretarial or clerical employee of the commission may accept such employment at any time after the termination of employment with the commission.

b. No member or employee of the commission shall represent any person or party other than the State before or against the commission with respect to any matter that was before the commission during the tenure of the commission member or employee of the commission for a period of two years from the termination of his or her office or employment with the commission.

C.5:5-25.2 Regulations relative to applicant for, holder of permit or license.

2. a. No applicant for or holder of a permit or license issued by the commission shall employ or offer to employ, or provide, transfer or sell, or offer to provide, transfer or sell, any interest, direct or indirect, in any holder of a permit or license issued by the commission to a former member or employee

of the commission restricted from such employment or interest pursuant to section 1 of this act, P.L.2003, c.151 (C.5:5-25.1).

b. The commission shall promulgate regulations establishing sanctions upon an applicant for or holder of a permit or license issued by the commission for a violation of this section.

C.5:5-43.2 Allotment of racing days.

3. Notwithstanding any other law to the contrary, the commission may allot racing dates for a period of not more than six calendar years.

4. Section 7 of P.L.1971, c.137 (C.5:10-7) is amended to read as follows:

C.5:10-7 Application for permit.

7. a. The authority is hereby authorized, licensed and empowered to apply to the Racing Commission for a permit or permits to hold and conduct, at any of the projects set forth in paragraphs (1) and (5) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6), horse race meetings for stake, purse or reward, and to provide a place or places on the race meeting grounds or enclosure for wagering by patrons on the results of such horse races by the parimutuel system, and to receive charges and collect all revenues, receipts and other sums from the ownership and operation thereof; provided that only the authority through its employees shall conduct such horse race meetings and wagering and the authority is expressly prohibited from placing in the control of any other person, firm or corporation the conduct of such horse race meetings, or wagering.

b. Except as otherwise provided in this section, such horse race meetings and parimutuel wagering shall be conducted by the authority in the manner and subject to compliance with the standards set forth in P.L.1940, c.17 (C.5:5-22 et seq.) and the rules, regulations and conditions prescribed by the Racing Commission thereunder for the conduct of horse race meetings and for parimutuel betting at such meetings.

c. Application for said permit or permits shall be on such forms and shall include such accompanying data as the Racing Commission shall prescribe for other applicants. The Racing Commission shall proceed to review and act on any such application within 30 days after its filing and the Racing Commission is authorized in its sole discretion to determine whether a permit shall be granted to the authority. If, after such review, the Racing Commission acts favorably on such application, a permit shall be granted to the authority without any further approval and shall remain in force and effect so long as any bonds or notes of the authority remain outstanding, the provisions of any other law to the contrary notwithstanding. In granting a permit to the authority to conduct a horse race meeting, the Racing Commission shall not be subject to any limitation as to the number of tracks authorized for the conduct of horse

race meetings pursuant to any provision of P.L. 1940, c. 17 (C.5:5-22 et seq.). Said permit shall set forth the dates to be allotted to the authority for its initial horse race meetings. Thereafter application for dates for horse race meetings by the authority and the allotment thereof by the Racing Commission, including the renewal of the same dates theretofore allotted, shall be governed by the applicable provisions of P.L. 1940, c. 17 (C.5:5-22 et seq.). Notwithstanding the provisions of any other law to the contrary, the Racing Commission shall allot annually to the authority for the Meadowlands Complex, in the case of harness racing, not less than 100 racing days, and in the case of running racing, not less than 56 racing days, if and to the extent that application is made therefor.

d. No hearing, referendum or other election or proceeding, and no payment, surety or cash bond or other deposit, shall be required for the authority to hold or conduct the horse race meetings with parimutuel wagering herein authorized.

e. The authority shall determine the amount of the admission fee for the races and all matters relating to the collection thereof.

f. Distribution of sums deposited in parimutuel pools to winners thereof shall be in accordance with the provisions of section 44 of P.L. 1940, c. 17 (C.5:5-64) pertaining thereto. The authority shall make disposition of the deposits remaining undistributed as follows:

(1) In the case of harness races:

(a) Hold and set aside in an account designated as a special trust account 1% of such total contributions in all pools, to be used and distributed as hereinafter provided and as provided in section 5 of P.L. 1967, c. 40, for the following purposes and no other:

(i) 42 1/2% thereof to increase purses and grant awards for starting horses, as provided or as may be provided by rules of the New Jersey Racing Commission, with payment to be made in the same manner as payment of other purses and awards;

(ii) 49% thereof for the establishment of a Sire Stakes Program for standardbred horses, with payment to be made to the Department of Agriculture for administration as hereinbefore provided;

(iii) 5 1/2% thereof to the Sire Stakes Program for purse supplements designed to improve and promote the standardbred breeding industry in New Jersey by increasing purses for owners of horses that are sired by a New Jersey registered stallion and are eligible to participate in the Sire Stakes Program. The Sire Stakes Program board of trustees shall consult with the Standardbred Breeders' and Owners' Association of New Jersey before disbursing money for purse supplements;

(iv) 3% thereof for other New Jersey horse breeding and promotion conducted by the New Jersey Department of Agriculture.

Payment of the sums held and set aside pursuant to subparagraphs (iii) and (iv) shall be made to the commission every seventh day of any and every race meeting in the amount then due, as determined in the manner provided above, and shall be accompanied by a report under oath showing the total of all such contributions, together with such other information as the commission may require.

(b) Distribute as purse money and for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey 5.1175%, or in the case of races on a charity racing day 5%, of such total contributions. Expenditures for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey shall not exceed 3.5% of the sum available for distribution as purse money. The formula for distribution of the purse money as either overnight purses or special stakes shall be determined by an agreement between the Standardbred Breeders' and Owners' Association of New Jersey and the authority. Notwithstanding the foregoing, for pools where the patron is required to select two or more horses, the authority shall distribute as purse money 5.6175%, or in the case of races on a charity racing day 5.5%, of the total contributions and for pools where the patron is required to select three or more horses, the authority shall distribute as purse money 7.1175%, or in the case of races on a charity racing day 7%, of the total contributions. Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, the authority shall retain out of the 7.1175% or 7% to be distributed as purse money a sum deemed necessary by the racing commission, for use by the commission to finance a pre-race blood testing program, and such other testing programs which the commission shall deem proper and necessary and which shall be subject to the regulation and control of said commission.

(c) In the case of races on a racing day other than a charity racing day, distribute to the Standardbred Breeders' and Owners' Association of New Jersey for the administration of a health benefits program for horsemen .1175% of such total contributions.

(d) In the case of races on a racing day other than a charity racing day, distribute to the Sire Stakes Program for standardbred horses .02% of such total contributions.

(e) In the case of races on a racing day other than a charity racing day, distribute to the Backstretch Benevolency Programs Fund created pursuant to P.L. 1993, c.15 (C.5:5-44.8) .01% of such total contributions.

(2) In the case of running races:

(a) Hold and set aside in an account designated as a special trust account .05% of such total contributions, to be used and distributed for State horse breeding and development programs, research, fairs, horse shows, youth

activities, promotion and administration, as provided in section 5 of P.L. 1967, c.40 (C.5:5-88).

(b) Distribute as purse money and for programs designed to aid the horsemen and the New Jersey Thoroughbred Horsemen's Association 4.475%, or in the case of races on a charity racing day 4.24%, of such total contributions. Expenditures for programs designed to aid the horsemen and the New Jersey Thoroughbred Horsemen's Association shall not exceed 2.9% of the sum available for distribution as purse money. The formula for distribution of the purse money as either overnight purses or special stakes shall be determined by an agreement between the New Jersey Thoroughbred Horsemen's Association and the authority. Notwithstanding the foregoing, for pools where the patron is required to select three or more horses, the authority shall distribute as purse money 7.475%, or in the case of races on a charity racing day 7.24%, of the total contributions.

(c) Deduct and set aside in a special trust account established pursuant to section 46b.(1)(e) and 46b.(2)(e) of P.L. 1940, c.17 (C.5:5-66) for the establishment and support by the commission of the thoroughbred breeding industry in New Jersey .1% of such total contributions, except that for pools where the patron is required to select three or more horses, the amount shall be .6%. The money in the special trust account shall be used to: (i) improve purses for closed races; (ii) provide awards to owners and breeders of registered New Jersey bred horses who earn portions of purses in open and closed races at New Jersey race tracks or in closed races at an out-of-State track as part of a multi-state event to promote thoroughbred breeding, and to owners of stallions posted on the official stallion roster of the Thoroughbred Breeders' Association of New Jersey, which sire such New Jersey bred money earners; and (iii) provide awards to the New Jersey Thoroughbred Breeders' Association for programs beneficial to thoroughbred breeding in this State. The New Jersey thoroughbred award program shall be administered and disbursed by the Thoroughbred Breeders' Association of New Jersey subject to the approval of the commission. The special trust account to be established pursuant to this paragraph shall be separate and apart from the special trust account established and maintained pursuant to subparagraph (a) of this paragraph.

(d) In the case of races on a racing day other than a charity racing day, distribute to the Thoroughbred Breeders' Association of New Jersey .02% of such total contributions.

(e) In the case of races on a racing day other than a charity racing day, distribute to the Backstretch Benevolency Programs Fund created pursuant to P.L. 1993, c.15 (C.5:5-44.8) .01% of such total contributions.

Payment of the sums held and set aside pursuant to subparagraphs (a) and (c) of this subsection shall be made to the commission every seventh day of any and every race meeting in the amount then due, as determined in the

manner provided above, and shall be accompanied by a report under oath showing the total of all such contributions, together with such other information as the commission may require.

In addition to the amounts above, in the case of races on a racing day designated or allotted as a charity racing day pursuant to P.L.1977, c.200 (C.5:5-44.2 et seq.), P.L.1993, c.15 (C.5:5-44.8), or section 1 of P.L.1997, c.80 (C.5:5-44.9), an amount equal to 1/2 of 1% of all parimutuel pools shall be paid to the commission at the time and in the manner prescribed by the commission.

All amounts remaining in parimutuel pools, including the breaks, after such distribution and payments shall constitute revenues of the authority. Except as otherwise expressly provided in this section 7, the authority shall not be required to make any payments to the Racing Commission or others in connection with contributions to parimutuel pools.

In the event that a written agreement between the authority and the respective horsemen's associations shall require the distribution of additional sums of money to increase purses or contributions to the special trust accounts hereinabove provided, or both, any such distribution to be made in the year 1981 shall be made by the authority only from, and to the extent of, available moneys from the preceding year set aside for such purpose, after application of the authority's revenues, moneys or other funds as provided in subsections c.(1), (2), (3), (4), (5), (6) and (7) of section 6 of P.L.1971, c.137 (C.5:10-6).

g. All sums held by the authority for payment of outstanding parimutuel tickets not claimed by the person or persons entitled thereto within the time provided by law shall be paid upon the expiration of such time, without further obligation to such ticketholder, as follows:

(1) In the case of running and harness races, beginning July 1, 1997 50% of those sums shall be paid to the Racing Commission for deposit in the general fund of the State and disposition in accordance with section 4 of P.L.1997, c.29 (C.5:5-68.1);

(2) In the case of running races, 50% of those sums shall be paid to the commission and set aside in the special trust account established pursuant to section 46b.(1)(e) and section 46b.(2)(e) of P.L.1940, c.17 (C.5:5-66); and

(3) In the case of harness races, 25% of those sums shall be retained by the permitholder to supplement purses for sire stakes races on which there is parimutuel wagering, and 25% shall be retained by the permitholder to supplement overnight purses.

h. No admission or amusement tax, excise tax, license or horse racing fee of any kind shall be assessed or collected from the authority by the State of New Jersey, or by any county or municipality, or by any other body having power to assess or collect license fees or taxes.

i. Any horse race meeting and the parimutuel system of wagering upon the results of horse races held at such race meeting shall not under any circumstances, if conducted as provided in the act and in conformity thereto, be held or construed to be unlawful, other statutes of the State to the contrary notwithstanding.

j. Each employee of the authority engaged in the conducting of horse race meetings shall obtain the appropriate license from the Racing Commission, subject to the same terms and conditions as is required of similar employees of other permit holders. The Racing Commission may suspend any member of the authority upon approval of the Governor and the license of any employee of the authority in connection with the conducting of horse race meetings, pending a hearing by the Racing Commission, for any violation of the New Jersey laws regulating horse racing or any rule or regulation of the commission. Such hearing shall be held and conducted in the manner provided in said laws.

Repealer.

5. Section 2 of P.L.1984, c.247 (C.5:5-43.1) is repealed.

6. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 152

AN ACT concerning the standard nonforfeiture rate for individual deferred annuities and amending P.L.1981, c.285.

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

1. Section 5 of P.L.1981, c.285 (C.17B:25-20) is amended to read as follows:

C.17B:25-20 Standard nonforfeiture law for individual deferred annuities.

5. This section shall be known as the standard nonforfeiture law for individual deferred annuities.

a. No contract of annuity or pure endowment, except as stated in subsection p., shall be issued or delivered in this State on or after January 1, 1972 and before the operative date of this section as defined in subsection o., unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering contract holder:

(1) That, in the event of default in any stipulated payment, the insurer will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such due date, of such value as may be hereinafter specified.

(2) A statement of the mortality tables, if any, and interest rates used in calculating the paid-up nonforfeiture benefits available under the contract, together with a table showing either the cash surrender value, if any, or the paid-up nonforfeiture benefit, if any, available on each anniversary of the contract either during the first 20 contract years or during the term of stipulated payments, whichever is shorter, such benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the contract and that there is no indebtedness to the insurer on the contract.

(3) A statement that the paid-up nonforfeiture benefits available under the contract are not less than the minimum benefits required by or pursuant to the insurance law of the state in which the contract is delivered; an explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any indebtedness to the insurer on the contract; if a detailed statement of the method of computation of the paid-up nonforfeiture benefits shown in the contract is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the contract is delivered; and a statement of the method to be used in calculating the paid-up nonforfeiture benefit available under the contract on any contract anniversary beyond the last anniversary for which such benefits are consecutively shown in the contract.

If an insurer shall provide for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than \$120.00 annually, the insurer may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection c.

b. Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract referred to in subsection a. in the event of default in a stipulated payment due on any contract anniversary, shall be such that its present value as of such anniversary shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the contract, including any existing paid-up additions, if there had been no default, over the sum of (1) the then present value of the adjusted stipulated payments as defined in subsection d. corresponding to stipulated payments which would have fallen due on and after such anniversary, and (2) the amount of any indebtedness to the insurer on the contract. In determining the benefits referred to in this subsection and

in calculating the adjusted stipulated payments referred to in subsection d. in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at a date which shall be the latest permitted by the contract for the commencement of such payments but not later than the contract anniversary nearest the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later; and the stipulated payments shall be deemed to be payable for the longest period during which they would be payable if election were made to have the annuity payments commence at such date.

c. Any cash surrender value allowed by any annuity or pure endowment contract referred to in subsection a. and the present value under any optional provision, of future benefits commencing on the due date of the stipulated payment in default shall each be at least equal to the then present value of the minimum paid-up nonforfeiture benefit required by subsection b.

d. The adjusted stipulated payments for any annuity or pure endowment contract referred to in subsection a. shall be calculated on an annual basis and shall be such uniform percentage of the respective stipulated payments specified in the contract for each contract year that the present value, at the date of issue of the contract, of all such adjusted stipulated payments shall be equal to the sum of (1) the then present value of the future guaranteed benefits provided for by the contract; (2) 20% of the adjusted stipulated payment for the first contract year; and (3) 2% of the adjusted stipulated payment for the first contract year for each year not exceeding 20 during which stipulated payments are payable.

All adjusted stipulated payments and present values referred to in this section shall for annuity and pure endowment contracts be calculated on the basis of (1) the applicable rates of interest, not exceeding 3 1/2% per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; and (2) the 1937 Standard Annuity Mortality Table, or the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner or any other table approved by the commissioner; provided that, in the case of annuity or pure endowment contracts issued after the operative date for the insurer of paragraph (ix) of subsection a. of the standard valuation law, N.J.S.17B:19-8, the 3 1/2% maximum interest rate specified in item (1) of this paragraph shall be increased to 4 1/2%, and, if the applicable rates of interest specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits exceed 3 1/2%, there shall be substituted for the mortality tables specified in item (2) the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner or any other table approved by the commissioner.

e. Any cash surrender value and any paid-up nonforfeiture benefit, available under any contract referred to in subsection a. in the event of default in the payment of a stipulated payment due at any time other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional stipulated payments beyond the last preceding contract anniversary. All values referred to in subsections b. to d. inclusive, may be calculated upon the assumption that any death benefit is payable at the end of the contract year of death. The net value of any paid-up additions shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection b., additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, and (3) as other policy benefits additional to pure endowment, and annuity benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits. Notwithstanding the provisions of subsection b., additional benefits providing the privilege to purchase additional annuity benefits at some future time without furnishing evidence of insurability, and stipulated payments therefor, may, with the consent of the commissioner, be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

f. In the case of contracts issued on or after the operative date of this section as defined in subsection o., no contract of annuity, except as stated in subsection p., shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections h., i., j., k. and m.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections h., i., k. and m. The insurer shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits

that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than \$20.00 monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

g. The minimum values as specified in subsections h., i., j., k. and m. of any paid-up annuity, cash surrender or death benefits available under an annuity contract referred to in subsection f., shall be based upon minimum nonforfeiture amounts as defined in this subsection:

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of 3% per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time; decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% per annum and the amount of any indebtedness to the insurer on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the insurer to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30.00 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65% of the net consideration for the first contract year and 87 1/2% of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more

than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge shall be the lesser of (i) \$30.00 or (ii) 10% of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of \$75.00.

(4) Notwithstanding any other provision of this subsection to the contrary, for any contract issued on or after the effective date of P.L.2003, c.152 and before the 730th day after that effective date, the interest rate at which net consideration shall be accumulated for purposes of determining minimum nonforfeiture amounts shall be 1 1/2% per annum.

h. Any paid-up annuity benefit available under a contract referred to in subsection f. shall have a present value on the date annuity payments are to commence at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

i. For contracts referred to in subsection f. which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value; decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum

nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

j. For contracts referred to in subsection f. which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts referred to in subsection f. which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

k. For the purpose of determining the benefits calculated under subsections i. and j., in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

l. Any contract referred to in subsection f. which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

m. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations referred to in subsection f. shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

n. For any contract referred to in subsection f. which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture

benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections h., i., j., k. and m., additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

o. After January 1, 1981, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1983. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such insurer, the provisions of subsections f. through n. shall become operative with respect to annuity contracts thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1983.

p. This section shall not apply to any reinsurance, group annuity purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.408), as amended, nor to any premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this State through an agent or other representative of the insurer issuing the contract. The requirements of subsections a. to e. of this section shall not apply to any group annuity, single premium pure endowment, or single stipulated payment annuity.

2. This act shall take effect on the 90th day following enactment.

Approved August 15, 2003.

CHAPTER 153

AN ACT concerning certain insurance producers and amending P.L.1970, c.217.

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

1. Section 1 of P.L.1970, c.217 (C.17:22-6.14a) is amended to read as follows:

C.17:22-6.14a Rates of commission to be set forth in contracts; exceptions; termination of contracts.

1. a. In the event that a policy is canceled by the insurer, either at its own behest or at the behest of the agent or broker of record, the unearned premium, including the unearned commission, shall be returned to the policyholder.

b. In the event that a policy of insurance, issued by the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1) or any successor thereto, is canceled by reason of nonpayment of premium to the insurer issuing the policy or nonpayment of an installment payment due pursuant to an insurance premium finance agreement, the broker of record for that policy may retain the full annual commission due thereon and, if a premium finance agreement is not involved, the effective date of cancellation of the policy shall be no earlier than 10 days prior to the last full day for which the premium paid by the insured, net of the broker's full annual commission, would pay for coverage on a pro rata basis in accordance with rules established by the commissioner.

c. Contracts between insurance companies and agents for the appointment of the agent as the representative of the company shall set forth the rate of commission to be paid to the agent for each class of insurance within the scope of such appointment written on all risks or operations in this State, except:

- (1) Reinsurance.
- (2) Life insurance.
- (3) Annuities.
- (4) Accident and health insurance.
- (5) Title insurance.
- (6) Mortgage guaranty insurance.
- (7) Hospital service, medical service, health service, or dental service

corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations.

Said rates of commission shall continue in force and effect unless changed by mutual written consent or until termination of said contract as hereinafter provided. Failure to achieve such mutual consent shall require that the agent's contract be terminated as hereinbelow provided. The rate of commission being paid on each class of insurance on the date of enactment hereof shall be deemed to be pursuant to the existing contract between agent and company.

d. Termination of any such contract for any reason other than one excluded herein shall become effective after not less than 90 days' notice in writing

given by the company to the agent and the Commissioner of Banking and Insurance. No new business or changes in liability on renewal or in force business, except as provided in subsection l. of this section, shall be written by the agent for the company after notice of termination without prior written approval of the company. However, during the term of the agency contract, including the said 90-day period, the company shall not refuse to renew such business from the agent as would be in accordance with said company's current underwriting standards. The company shall, during a period of 12 months from the effective date of such termination, provided the former agent has not been replaced as the broker of record by the insured, and upon request in writing of the terminated agent, renew all contracts of insurance for such agent for said company as may be in accordance with said company's then current underwriting standards and pay to the terminated agent a commission in accordance with the agency contract in effect at the time notice of termination was issued. Said commission can be paid only to the holder of a valid New Jersey insurance producer's license. In the event any risk shall not meet the then current underwriting standards of said company, that company may decline its renewal, provided that the company shall give the terminated agent and the insured not less than 60 days' notice of its intention not to renew said contract of insurance.

e. The agency termination provisions of this act shall not apply to those contracts:

(1) in which the agent is paid on a salary basis without commission or where he agrees to represent exclusively one company or to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company moneys due to the company after his receipt of a written demand therefor, or after revocation of the agent's license by the Commissioner of Banking and Insurance; and in any such case the company shall, upon request of the insured, provided he meets the then current underwriting standards of the company, renew any contract of insurance formerly processed by the terminated agent, through an active agent, or directly pursuant to such rules and regulations as may be promulgated by the Commissioner of Banking and Insurance; or

(2) which are entered into between a qualified insurer and a UEZ agent pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4).

f. The Commissioner of Banking and Insurance, on the written complaint of any person stating that there has been a violation of this act, or when he deems it necessary without a complaint, may inquire and otherwise investigate to determine whether there has been any violation of this act.

g. All existing contracts between agent and company in effect in the State of New Jersey on the effective date of this act are subject to all provisions of this act.

h. The Commissioner of Banking and Insurance may, if he determines that a company is in unsatisfactory financial condition, exclude such company from the provisions of this act.

i. Whenever under this act it is required that the company shall renew a contract of insurance, the renewal shall be for a time period equal to one additional term of the term specified in the original contract, but in no event to be less than one year.

j. The provisions of subsection b. of this section shall not apply to policies written by the New Jersey Automobile Full Insurance Underwriting Association established pursuant to sections 13 through 34 of P.L. 1983, c.65 (C.17:30E-1 et seq.).

k. The New Jersey Automobile Full Insurance Underwriting Association established pursuant to sections 13 through 34 of P.L. 1983, c.65 (C.17:30E-1 et seq.), shall not be liable to pay any commission required by subsection b. of this section on any policies written by the association prior to January 1, 1986.

l. A company which terminates its contractual relationship with an agent subject to the provisions of subsection d. of this section shall, at the time of the agent's termination, with respect to insurance covering an automobile as defined in subsection a. of section 2 of P.L. 1972, c.70 (C.39:6A-2), notify each named insured whose policy is serviced by the terminated agent in writing of the following: (1) that the agent's contractual relationship with the company is being terminated and the effective date of that termination; and (2) that the named insured may (a) continue to renew and obtain service through the terminated agent; or (b) renew the policy and obtain service through another agent of the company.

Notwithstanding any provision of this section to the contrary, no insurance company which has terminated its contractual relationship with an agent subject to subsection d. of this section shall, upon the expiration of any automobile insurance policy renewed pursuant to subsection d. of this section which is required to be renewed pursuant to section 3 of P.L. 1972, c.70 (C.39:6A-3), refuse to renew, accept additional or replacement vehicles, refuse to provide changes in the limits of liability or refuse to service a policyholder in any other manner which is in accordance with the company's current underwriting standards, upon the written request of the agent or as otherwise provided in this section, provided the agent maintains a valid New Jersey insurance producer's license and has not been replaced as the broker of record by the insured. However, nothing in this section shall be deemed to prevent nonrenewal of an automobile insurance policy pursuant to the provisions of section 26 of P.L. 1988, c.119 (C.17:29C-7.1).

The company shall pay a terminated agent who continues to service policies pursuant to the provisions of this subsection a commission in an amount not

less than that provided for under the agency contract in effect at the time the notice of termination was issued. A terminated agent who continues to service automobile insurance policies pursuant to this subsection shall be deemed to be an insurance producer as defined in section 3 of P.L.2001, c.210 (C.17:22A-28), and not an agent of the company, except that the terminated agent shall have the authority to bind coverage for renewals, additional or replacement vehicles, and for changed limits of liability as provided in this subsection to the same extent as an active agent for the company. The company shall provide the terminated agent with a written copy of its current underwriting guidelines during the time the agent continues to service policies pursuant to this subsection.

If a terminated agent who is continuing to service policies pursuant to the provisions of this subsection violates the written underwriting guidelines of the company in such a manner or with such frequency as to substantially affect the company's ability to underwrite or provide coverage, the company may discontinue accepting renewal and service requests from, and paying commissions to, the terminated agent; provided, however, that the company provides the terminated agent with at least 45 days' written notice which shall include a detailed explanation of the reasons for discontinuance. A copy of this notice, along with supporting documentation providing evidence that the terminated agent received proper notice of discontinuance pursuant to this subsection and evidence in support of the company's action, shall be sent by the company to the Division of Enforcement and Consumer Protection in the Department of Banking and Insurance.

The provisions of this subsection shall not apply to any policy issued by the New Jersey Automobile Full Insurance Underwriting Association created pursuant to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.).

m. A qualified insurer which terminates its contractual relationship with its UEZ agent pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4) shall terminate its relationship in accordance with the following provisions:

(1) The qualified insurer shall give the UEZ agent at least 60 days' written notice of termination. Notice of termination shall be on a form prescribed by the commissioner and shall indicate the date of termination and the reason for the termination. A copy of the notice of termination shall be sent to the commissioner.

(2) Notwithstanding the provisions of this section and section 26 of P.L.1988, c.119 (C.17:29C-7.1), a qualified insurer may refuse to renew the business written through a UEZ agent in an orderly and non-discriminatory manner over the course of at least a three-year period provided that such refusals to renew in each year shall not exceed one-third of a terminated UEZ agent's book of business on the effective date of termination of its relationship with its UEZ agent. A qualified insurer intending to refuse renewal business written

by a terminated UEZ agent shall notify the commissioner prior to the date of the UEZ agent's termination.

(3) The terminated UEZ agent who continues to service automobile insurance policies shall continue to receive commissions for any renewal business pursuant to the terms of the contract in force with the qualified insurer at the time of termination, provided that the UEZ agent maintains a valid New Jersey insurance producer's license and has not been replaced as the broker of record by the insured. A terminated UEZ agent who continues to service automobile insurance policies shall be deemed to be an insurance broker and not the agent of the qualified insurer.

n. In any case of a transfer by an insurance company of any kind or kinds of insurance specified in its certificate of authority to another company, pursuant to the provisions of R.S.17:17-10 or section 72 of P.L.1990, c.8 (C.17:33B-30), the policies transferred shall continue to be serviced by the agent of record and the company to which the business is transferred shall offer contracts to the agents of the transferring company which contain terms and conditions concerning the use, control and ownership of policy expirations and payment of commissions that are no less favorable than the terms and conditions of their current contracts. Nothing in this subsection shall prohibit a company from offering contracts to agents of the transferring company that limit the agents' right to produce new business or prohibit subsequent modification of the rate of commission set forth in the agency contract in accordance with subsection c. of this section. This subsection shall not apply if the company seeking to transfer policies pays its agents on a salary basis without commission or if its agents represent the company exclusively.

2. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 154

AN ACT concerning experience rating of certain dental service corporations, amending and supplementing P.L.1968, c.305 and repealing section 19 of P.L.1968, c.305.

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

C.17:48C-19.1 Adjustment of rate of premium for dental service corporations, certain circumstances.

1. a. A group contract covering at least 10 employees or members may provide for the adjustment of the rate of premium based on past or projected experience, and may include those claim costs and utilization trend factors

which the dental service corporation deems necessary in its discretion. No dental service corporation shall use any form of prospective or retrospective experience rating plan until it shall have filed with the Commissioner of Banking and Insurance the formulas to be used and the classes or groups to which they are to apply. The commissioner may disapprove the formulas or classes at any time if the commissioner finds that the rates produced thereby are excessive, inadequate or unfairly discriminatory or that the formulas or classes are such as to prejudice the interests of persons who are eligible for coverage under contracts with the dental service corporation which are not subject to experience rating.

b. An experience rating formula used pursuant to this section may provide for the allowance of an equitable discount if the policyholder agrees to perform certain administrative and recordkeeping functions in connection with the routine maintenance of the group contract.

c. Nothing in this section shall preclude a dental service corporation from incorporating in the rating formulas those claim cost and utilization trend factors which it deems necessary in its discretion, so long as the rates produced are self-supporting in the aggregate, not excessive, and the formulas for classes do not prejudice the interests of persons who are eligible for coverage under contracts with the dental service corporation which are not subject to experience rating.

d. The commissioner may, by regulation, prohibit or limit the experience rating of contracts covering groups of fewer than 50 employees or members if the commissioner determines that experience rating of those contracts is not in the public interest.

2. Section 20 of P.L.1968, c.305 (C.17:48C-20) is amended to read as follows:

C.17:48C-20 Agreements for participation with other corporations for issuance of group contracts.

20. A dental service corporation of this State may enter into agreements to participate with other corporations in the issuance of group contracts to policyholders whose employees or members are located in more than one state. Without regard to the limitations specified in section 1 of P.L.2003, c.154 (C17:48C-19.1), the agreements may provide for experience rating, for a sharing of the premium, claims, and expenses by the participating corporations or for acceptance or ceding of the whole or portions of group risks on a reinsurance basis. No such agreements shall, however, prejudice the interests of persons who are eligible for dental services under other contracts with the dental service corporation. Such agreements shall be filed with and approved by the commissioner before becoming effective.

Repealer.

3. Section 19 of P.L.1968, c.305 (C.17:48C-19) is repealed.
4. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 155

AN ACT concerning deferred compensation plans for boards of education employees and amending N.J.S.18A:66-127, 18A:66-128 and N.J.S.18A:66-129.

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

1. N.J.S.18A:66-127 is amended to read as follows:

Employees of board of education, agreement to reduce salary for purchase of annuity.

18A:66-127. Any board of education may enter into an agreement with any of its employees whereby the employee agrees to take a reduction in salary with respect to amounts earned after the effective date of such agreement in return for the board's agreement to use a corresponding amount to purchase for the employee an annuity, as defined by N.J.S.17B:17-5, from any company authorized to sell such annuities under the provisions of Title 17B of the New Jersey Statutes, or to invest in a custodial account for the employee through a broker-dealer or agent registered pursuant to the provisions of sections 9 and 10 of the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-56 and C.49:3-57).

Any such annuity shall be purchased by means of an individual or group annuity contract which may provide for continuance of purchase payments during total disability, and under which the rights of such employee to such contract shall be nonforfeitable. Any such custodial account shall be established in accordance with and maintained to meet the requirements of section 403(b)(7) or section 457(b) of the Federal Internal Revenue Code of 1986, 26 U.S.C. ss.403(b) and 457(b), as amended. All moneys deferred for section 457 plans adopted after the effective date of this act, P.L.2003, c.155 and any other income shall be held in trust, in one or more annuity contracts or in custodial accounts for the exclusive benefit of the participating employees and their beneficiaries. Every such agreement shall specify the amount of such reduction, the effective date thereof, and shall be legally binding and irrevocable with respect to the amounts earned while the agreement is in effect. The total amount of the reductions in an employee's salary pursuant hereto, for any calendar year, shall

not exceed the limitations set forth in sections 403(b), 457(b) and 415(c) of the Internal Revenue Code of 1986 as amended for such year. Any such agreement may be terminated upon notice in writing by either party.

Amounts payable pursuant to this section by a board of education on behalf of an employee for a pay period shall be transmitted and credited not later than the fifth business day after the date on which the employee is paid for that pay period.

2. N.J.S.18A:66-128 is amended to read as follows:

Reduction of salary for obtaining certain benefits.

18A:66-128. Any reduction in salary agreed to by any employee pursuant to the provisions of this article shall be deemed to be a reduction in salary for the purpose of obtaining the benefits afforded under section 403(b) or section 457, 26 U.S.C. ss.403(b) and 457, of the Federal Internal Revenue Code and shall not be deemed to be a reduction in salary in any other matter, the determination of which is based upon the total amount of the employee's includable compensation as set forth in sections 403(b) and 457(b) of the federal Internal Revenue Code.

3. N.J.S.18A:66-129 is amended to read as follows:

Agreements validated, confirmed.

18A:66-129. Any agreements having the same purpose as agreements authorized by this article, made prior to October 7, 1966, between a board of education and any of its employees are hereby validated and confirmed and shall be as good and effectual as if they had been made under the provisions of this article provided that the terms of any such agreement applicable after July 1, 1967 are in conformity with the terms applicable to the agreements specifically authorized by this article.

Any 457(b) deferred compensation plan established by a board of education prior to the effective date of this act, P.L.2003, c.155, which has the same purpose as plans authorized by this act, is hereby validated and confirmed and shall be as good and effectual as if it had been made under the provisions of this act, provided that the terms of such plan, and the manner in which it was established and managed, are in conformity with the provisions of this act.

4. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 156

AN ACT requiring certain departments to promulgate regulations addressing unique security concerns posed by sexually violent predators who have been civilly committed and amending P.L.1998, c.71.

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

1. Section 11 of P.L.1998, c.71 (C.30:4-27.34) is amended to read as follows:

C.30:4-27.34 Operation of facility for sexually violent predators; regulations.

11. a. The Department of Corrections shall be responsible for the operation of any facility designated for the custody, care and treatment of sexually violent predators, and shall provide or arrange for custodial care of persons committed pursuant to this act. Except as may be provided pursuant to subsection c. of section 9 of this act, a person committed pursuant to this act shall be kept in a secure facility and shall be housed and managed separately from offenders in the custody of the Department of Corrections and, except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

b. The Division of Mental Health Services in the Department of Human Services shall provide or arrange for treatment for a person committed pursuant to this act. Such treatment shall be appropriately tailored to address the specific needs of sexually violent predators.

c. Appropriate representatives of the Department of Corrections and the Department of Human Services shall participate in an interagency oversight board to facilitate the coordination of the policies and procedures of the facility.

d. Notwithstanding the provisions of section 10 of P.L.1965, c.59 (C.30:4-24.2) or any other law to the contrary, the rights and rules of conduct applicable to a person subject to involuntary commitment as a sexually violent predator pursuant to P.L.1998, c.71 (C.30:4-27.24 et seq.) shall be established by regulation promulgated jointly by the Commissioner of Human Services and the Commissioner of Corrections, in consultation with the Attorney General. The regulations promulgated under this subsection shall take into consideration the rights of patients as set forth in section 10 of P.L.1965, c.59 (C.30:4-24.2), but shall specifically address the differing needs and specific characteristics of, and treatment protocols related to, sexually violent predators. In developing these regulations, the commissioners shall give due regard to security concerns and safety of the residents, treatment staff, custodial personnel and others in and about the facility.

2. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 157

AN ACT concerning the replacement of the Standard Industrial Classification codes with the North American Industrial Classification System for certain regulated industries, supplementing Title 4 and Title 13 of the Revised Statutes, and amending P.L.1983, c.31.

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

C.13:1D-138 Rules, regulations adopted by DEP.

1. The Department of Environmental Protection, in consultation with the Department of Labor, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations that:

a. identify the categories of employers, entities, establishments or facilities contained in those Standard Industrial Classification codes that are included in the definition of "business entity," "employer," "industrial establishment," "industrial facility," or "private firm," regulated under P.L.1991, c.235 (C.13:1D-35 et seq.), P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1984, c.210 (C.13:1K-15 et seq.), P.L.1993, c.381 (C.58:28-1 et seq.), P.L.1983, c.315 (C.34:5A-1 et seq.), or P.L.1986, c.142 (C.52:27D-222 et seq.); and

b. identify the universe of those employers, entities, establishments, or facilities under the North American Industry Classification System of codes that are generally equivalent to those identified in subsection a. of this section.

C.13:1D-139 Regulated universe of business entities.

2. a. The generally equivalent universe of employers, entities, establishments, or facilities identified in the rules and regulations adopted by the Department of Environmental Protection pursuant to subsection b. of section 1 of this act shall be the regulated universe of business entities, employers, industrial establishments, industrial facilities, or private firms subject to the provisions of P.L.1991, c.235 (C.13:1D-35 et seq.), P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1984, c.210 (C.13:1K-15 et seq.), P.L.1993, c.381 (C.58:28-1 et seq.), P.L.1983, c.315 (C.34:5A-1 et seq.), or P.L.1986, c.142 (C.52:27D-222 et seq.) upon the operative date of the regulations.

b. The department shall ensure that the categories of employers, entities, establishments, or facilities regulated pursuant to the rules and regulations

adopted pursuant to section 1 of this act are consistent with those regulated prior to the effective date of this act.

No business entities, employers, industrial establishments, industrial facilities, or private firms shall be subject to, or excluded from the provisions of P.L.1991, c.235 (C.13:1D-35 et seq.), P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1984, c.210 (C.13:1K-15 et seq.), P.L.1993, c.381 (C.58:28-1 et seq.), P.L.1983, c.315 (C.34:5A-1 et seq.), or P.L.1986, c.142 (C.52:27D-222 et seq.) solely as a result of the replacement of the Standard Industrial Classification codes with the North American Industrial Classification System of codes.

C.13:1D-140 Regulation prior to operative date.

3. Prior to the operative date of the rules and regulations required to be adopted by the Department of Environmental Protection pursuant to section 1 of this act, every business entity, employer, industrial establishment, industrial facility or private firm that is subject to P.L.1991, c.235 (C.13:1D-35 et seq.), P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1984, c.210 (C.13:1K-15 et seq.), P.L.1993, c.381 (C.58:28-1 et seq.), P.L.1983, c.315 (C.34:5A-1 et seq.), or P.L.1986, c.142 (C.52:27D-222 et seq.) shall continue to be regulated pursuant to those acts without regard to the cessation of use by certain State or federal agencies of the Standard Industrial Classification system.

C.13:1D-141 Temporary regulations.

4. Prior to the adoption of rules and regulations pursuant to section 1 of this act and notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Environmental Protection may, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary regulations as the commissioner determines is necessary to provide for classification under the North American Industry Classification System of business entities, employers, industrial establishments, industrial facilities, or private firms regulated under P.L.1991, c.235 (C.13:1D-35 et seq.), P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1984, c.210 (C.13:1K-15 et seq.), P.L.1993, c.381 (C.58:28-1 et seq.), P.L.1983, c.315 (C.34:5A-1 et seq.), or P.L.1986, c.142 (C.52:27D-222 et seq.) and classified under the Standard Industrial Classification System. The temporary regulations shall not exclude any business entity, employer, industrial establishment, industrial facility, or private firm that was regulated prior to the effective date of this act, or include any business entity, employer, industrial establishment, industrial facility, or private firm that was not already regulated prior to the effective date of this act. The temporary regulations shall be in effect for a period not to exceed 270 days after the date of the filing, except that in no case shall the temporary regulations be in effect one year after the effective date of P.L.2003, c.157 (C.13:1D-138

et al.). The temporary regulations may thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act".

C.4:1C-9.1 Rules, regulations adopted by State Agriculture Development Committee.

5. a. The State Agriculture Development Committee, in consultation with the Department of Labor, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations determining the classification for agriculture, forestry, fishing, and trapping under the North American Industry Classification System of codes, and for the production of agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities that are described in the Standard Industrial Classification codes for agriculture, forestry, fishing and trapping, for the purposes of compliance with P.L.1983, c.31 (C.4:1C-1 et seq.). The State Agriculture Development Committee shall ensure that the provisions of P.L.1983, c.31 (C.4:1C-1 et seq.) shall continue to apply to any owner or operator of a commercial farm, or other person, to whom the provisions applied prior to the effective date of P.L.2003, c.157 (C.13:1D-138 et al.).

b. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the State Agriculture Development Committee may, immediately upon filing the regulations with the Office of Administrative Law, adopt such temporary regulations as the committee determines necessary to implement the provisions of P.L.2003, c.157 (C.13:1D-138 et al.). The regulations shall be in effect for a period not to exceed 270 days after the date of filing, except that in no case shall the regulations be in effect one year after the effective date of P.L.2003, c.157 (C.13:1D-138 et al.). The regulations may thereafter be amended, adopted or readopted as the committee determines necessary in accordance with the "Administrative Procedure Act".

6. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as follows:

C.4:1C-9 Commercial farm owners, operators; permissible activities.

6. Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate

county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:

- a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;
- b. Process and package the agricultural output of the commercial farm;
- c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;
- d. Replenish soil nutrients and improve soil tilth;
- e. Control pests, predators and diseases of plants and animals;
- f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas;
- g. Conduct on-site disposal of organic agricultural wastes;
- h. Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm; and
- i. Engage in any other agricultural activity as determined by the State Agriculture Development Committee and adopted by rule or regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

7. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 158

AN ACT appropriating moneys to the Department of Environmental Protection for the purpose of making zero interest loans to project sponsors to finance a portion of the costs of construction of environmental infrastructure projects.

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

1 a. (1) There is appropriated to the Department of Environmental Protection from the Clean Water Fund - State Revolving Fund Accounts (hereinafter referred to as the "Clean Water State Revolving Fund Accounts") an amount equal to the federal fiscal year 2003 capitalization grant made available to the State for clean water projects pursuant to the "Water Quality Act of 1987" (33 U.S.C.s.1251 et seq.), and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Clean Water Act").

(2) There is appropriated to the Department of Environmental Protection from the Drinking Water State Revolving Fund an amount equal to the federal fiscal year 2003 capitalization grant made available to the State for drinking water projects pursuant to the "Safe Drinking Water Act Amendments of 1996" Pub.L.104-182, and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Safe Drinking Water Act").

The Department of Environmental Protection is authorized to transfer from the Clean Water State Revolving Fund Accounts to the Drinking Water State Revolving Fund an amount up to the maximum amount authorized to be transferred pursuant to the Federal Safe Drinking Water Act to meet present and future needs for the financing of eligible drinking water projects, and an amount equal to said maximum amount is hereby appropriated to the department for those purposes.

(3) There is appropriated to the Department of Environmental Protection the unappropriated balances from the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," (P.L.1985, c.329).

(4) There is appropriated to the Department of Environmental Protection the sum of \$10,000,000 from the "Water Supply Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," (P.L.1981, c.261), as amended by P.L.1983, c.355 and amended and supplemented by P.L.1997, c.223.

Any such amounts shall be for the purpose of making zero interest loans, to the extent sufficient funds are available, to or on behalf of local government units or public water utilities (hereinafter referred to as "project sponsors") to finance a portion of the cost of construction of clean water projects and drinking water projects listed in sections 2 and 3 of this act, and for the purpose of implementing and administering the provisions of this act, to the extent permitted by the "Water Quality Act of 1987" (33 U.S.C.s.1251 et seq.), the "Wastewater Treatment Bond Act of 1985" (P.L.1985, c.329), the "Water Supply Bond Act of 1981," (P.L.1981, c.261), the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989" (P.L.1989, c.181), the Federal Safe Drinking Water Act, and any amendatory and supplementary acts thereto, and State law.

b. The department is authorized to make zero interest loans to or on behalf of the project sponsors for the environmental infrastructure projects listed in subsection a. of section 2 and subsection a. of section 3 of this act for clean water projects, and subsection b. of section 2 and subsection b. of section 3 of this act for drinking water projects, up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the Commissioner of Environmental Protection pursuant to section 6 of this act, or if a project fails to meet the requirements of section 4 of this act.

c. The department is authorized to make zero interest loans to or on behalf of the project sponsors for the environmental infrastructure projects listed in sections 2 and 3 of this act under the same terms, conditions and requirements as set forth in this section from any unexpended balances of the amounts appropriated pursuant to section 1 of P.L.1987, c.200, section 2 of P.L.1988, c.133, section 1 of P.L.1989, c.189, section 1 of P.L.1990, c.99, section 1 of P.L.1991, c.325, section 1 of P.L.1992, c.38, section 1 of P.L.1993, c.193, section 1 of P.L.1994, c.106, section 1 of P.L.1995, c.219, section 1 of P.L.1996, c.85, section 1 of P.L.1997, c.221, section 2 of P.L.1998, c.84, section 2 of P.L.1999, c.174, or section 2 of P.L.2000, c.92, including amounts resulting from the final building cost reductions authorized pursuant to section 6 of P.L.1987, c.200, section 7 of P.L.1988, c.133, section 6 of P.L.1989, c.189, section 6 of P.L.1990, c.99, section 6 of P.L.1991, c.325, section 6 of P.L.1992, c.38, section 6 of P.L.1993, c.193, section 6 of P.L.1994, c.106, section 6 of P.L.1995, c.219, section 6 of P.L.1996, c.85, section 6 of P.L.1997, c.221, section 7 of P.L.1998, c.84, section 6 of P.L.1999, c.174, section 6 of P.L.2000, c.92, section 6 of P.L.2001, c.222 and section 6 of P.L.2002, c.70, and from any repayments of loans from the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," or amounts deposited therein during State fiscal year 2003 pursuant to the provisions of section 16 of P.L.1985, c.329, including any Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," and from any repayment of loans from the Drinking Water State Revolving Fund.

2. a. (1) The department is authorized to expend funds for the purpose of making supplemental zero interest loans to or on behalf of the project sponsors listed below for the following clean water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340641-01-1	Camden City	\$3,900,000
340325-02-1	Monmouth County Bayshore OA	\$ 300,000

340454-03-1	Warren County (Pequest River) MUA	<u>\$1,600,000</u>
TOTAL		<u>\$5,800,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to section 6 of this act and the loan amounts certified by the commissioner in State fiscal years 2002 and 2003 and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to section 4 of P.L.1985, c.329. The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 4 of this act.

(3) The zero interest loans for the projects authorized in this subsection shall have priority over projects listed in subsection a. of section 3 of this act.

b. (1) The department is authorized to expend funds for the purpose of making supplemental loans to or on behalf of the project sponsors listed below for the following drinking water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0408001-003-1	Camden City	\$5,700,000
0408001-009-1	Camden City	\$3,000,000
0424001-001-1	Merchantville-Pennsauken WC	<u>\$ 500,000</u>
	TOTAL	<u>\$9,200,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the commissioner in State fiscal years 2002 and 2003, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to section 5 of P.L.1981, c.261. The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 4 of this act.

(3) The loans authorized in this subsection shall have priority over the environmental infrastructure projects listed in subsection b. of section 3 of this act.

3. a. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2004 Clean Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340926-01	Paterson City	\$9,900,000
340399-20	North Bergen Township MUA	\$44,700,000
340944-01	Chesterfield Township	\$ 700,000
340921-05	Millville City	\$1,600,000
340547-09	Rahway Valley SA	\$ 500,000
340803-04	Hackettstown MUA	\$1,100,000
340547-07	Rahway Valley SA	\$12,800,000
343045-01	Cape May City	\$3,900,000
340640-08	Camden County MUA	\$4,200,000
343037-01	Burlington County BCF	\$1,500,000
343027-01	Edison Township	\$ 900,000
343010-02	Brick Township	\$3,300,000
340945-01	Old Bridge MUA	\$1,000,000
340437-11	New Brunswick City	\$3,900,000
343039-01	Manalapan Township	\$2,400,000
343030-03	Montville Township	\$ 900,000
343034-02	Readington Township	\$ 300,000
343012-01	Clinton Township	\$9,300,000
343047-01	Byram Township (Morris LC	\$1,500,000
340957-01	Fairfield Township	\$1,300,000
343048-01	Lebanon Township (New Jersey Water Supply Authority)	\$2,100,000
343049-01	Peapack-Gladstone Borough	\$3,000,000
340778-03	West Paterson Borough	\$ 600,000
342007-03	Burlington County BCF	\$8,000,000
340299-06	Linden-Roselle SA	\$7,300,000
340641-02	Camden City	\$4,200,000
340844-01	Clifton City	\$ 400,000
340435-06	Perth Amboy City	\$3,300,000
340969-03	Berkeley Township SA	\$2,400,000
340858-02	Cranford Township	\$1,200,000
340029-02	Secaucus Town	\$6,000,000
340873-01	Clinton Township SA	\$ 400,000
340362-02	Harrison Township	\$1,200,000
340569-03	Byram Township	\$ 200,000

340363-02/03	Runnemedede SA	\$ 400,000
340305-01	Barrington Borough	\$ 600,000
340882-05	Lambertville SA	\$ 900,000
340842-02	High Bridge Borough	\$ 100,000
	TOTAL	<u>\$148,000,000</u>

b. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2004 Drinking Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0601001-001	Bridgeton City	\$1,000,000
061001-001	Millville City	\$ 900,000
1505004-001	Berkeley Township MUA	\$4,500,000
16113001-003/ 004/010/011	North Jersey District Water Supply Commission	\$8,100,000
0408001-010	Camden City	\$9,300,000
1518001-001/002	Cedar Glen Homes	\$ 300,000
1517001-005/006	Long Beach Township	\$1,600,000
0604001-004	Bayview Water Company	\$ 400,000
1111001-003	Trenton City	\$6,900,000
1209002-003	Old Bridge MUA	\$1,000,000
1415001-001/ 003/007	Fayson Lake Water Company	\$ 700,000
1225001-017	Middlesex Water Company	\$5,100,000
1604001-001	Hawthorne Borough	\$1,500,000
0708001-002	Glen Ridge Borough	\$ 700,000
1209002-004	Old Bridge MUA	\$2,100,000
2108001-001/002	Hackettstown MUA	\$ 300,000
0811002-001	Monroe Township MUA	\$3,400,000
1504001-002	Beachwood Borough	\$ 300,000
1510001-001	Island Heights Borough	\$ 300,000
0324001-003	Mount Laurel Township MUA	\$ 700,000
	TOTAL	<u>\$49,100,000</u>

4. Any loan made by the Department of Environmental Protection pursuant to this act shall be subject to the following requirements:

a. The commissioner has certified that the project is in compliance with the provisions of P.L.1977, c.224, P.L.1985, c.329, P.L.1992, c.88, P.L.1997, c.223 or P.L.1997, c.225, and any rules and regulations adopted pursuant thereto;

b. The loan amount shall not exceed 50% of the allowable project cost of the environmental infrastructure facility, except that for (1) projects serving a designated Urban Center or Urban Complex; (2) projects that eliminate, reduce or improve combined sewer overflows; or (3) open space land acquisition projects, the loan amount shall not exceed 75% of the allowable project cost of the environmental infrastructure facility;

c. The loan shall be repaid within a period not to exceed 23 years of the making of the loan;

d. The loan shall be conditioned upon approval of a loan from the New Jersey Environmental Infrastructure Trust pursuant to P.L.2003, c.159;

e. The loan shall be subject to any other terms and conditions as may be established by the commissioner and approved by the State Treasurer, which may include, notwithstanding any other provision of law to the contrary, subordination of a loan authorized in this act to loans made by the trust pursuant to P.L.2003, c.159, or to administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5).

5. The priority lists and authorization for the making of loans pursuant to sections 2 and 3 of this act shall expire on July 1, 2004, and any project sponsor which has not executed and delivered a loan agreement with the department for a loan authorized in this act shall no longer be entitled to that loan.

6. The Commissioner of Environmental Protection is authorized to reduce or increase the individual amount of loan funds made available to or on behalf of project sponsors pursuant to sections 2 and 3 of this act based upon final building costs defined in and determined in accordance with rules and regulations adopted by the commissioner pursuant to section 4 of P.L.1985, c.329, section 11 of P.L.1977, c.224 (C.58:12A-11) or section 5 of P.L.1981, c.261, provided that the total loan amount does not exceed the original loan amount.

7. The expenditure of the funds appropriated by this act is subject to the provisions and conditions of P.L.1977, c.224, P.L.1985, c.329, P.L.1992, c.88, P.L.1997, c.223 or P.L.1997, c.225, and the rules and regulations adopted by the commissioner pursuant thereto, and the provisions of the Federal Clean Water Act or the Federal Safe Drinking Water Act, as appropriate.

8. The Department of Environmental Protection shall provide general technical assistance to any project sponsor requesting assistance regarding environmental infrastructure project development or applications for funds for a project.

9. a. Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, prior to repayment to the "1992 Wastewater Treatment Fund" pursuant to the provisions of section 28 of P.L.1992, c.88, prior to repayment to the Drinking Water State Revolving Fund, prior to repayment to the "Stormwater Management and Combined Sewer Overflow Abatement Fund" pursuant to the provisions of section 15 of P.L.1989, c.181, or prior to repayment to the "Water Supply Fund" pursuant to the provisions of section 15 of P.L.1981, c.261, repayments of loans made pursuant to these acts may be utilized by the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, under terms and conditions established by the commissioner and trust, and approved by the State Treasurer, and consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) and federal tax, environmental or securities law, to the extent necessary to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.2003, c.159, and to secure the administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the project sponsors receiving trust loans.

b. Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, prior to repayment to the "1992 Wastewater Treatment Fund" pursuant to the provisions of section 28 of P.L.1992, c.88, prior to repayment to the "Water Supply Fund" pursuant to the provisions of section 15 of P.L.1981, c.261, prior to repayment to the Drinking Water State Revolving Fund or prior to repayment to the "Stormwater Management and Combined Sewer Overflow Abatement Fund" pursuant to the provisions of section 15 of P.L.1989, c.181, the trust is further authorized to utilize repayments of loans made pursuant to P.L.1989, c.189, P.L.1990, c.99, P.L.1991, c.325, P.L.1992, c.38, P.L.1993, c.193, P.L.1994, c.106, P.L.1995, c.219, P.L.1996, c.85, P.L.1997, c.221, P.L.1998, c.84, P.L.1999, c.174, P.L.2000, c.92, P.L.2001, c.222, P.L.2002, c.70 or P.L.2003, c.158 to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93, P.L.2001, c.224, P.L.2002, c.71 or P.L.2003, c.159, and to secure the administrative fees payable to the trust under these loans pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5).

c. To the extent that any loan repayment sums are used to satisfy any trust bond repayment or administrative fee payment deficiencies, the trust shall repay such sums to the department for deposit into the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the "Water Supply Fund," the Drinking Water State Revolving Fund or the "Stormwater Management and Combined Sewer Overflow Abatement Fund," as appropriate,

from amounts received by or on behalf of the trust from project sponsors causing any such deficiency.

10. The Commissioner of Environmental Protection is authorized to enter into capitalization grant agreements as may be required pursuant to the Federal Clean Water Act or the Federal Safe Drinking Water Act.

11. There is appropriated to the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) from repayments of loans deposited in any account, including the Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the "Water Supply Fund," the "Stormwater Management and Combined Sewer Overflow Abatement Fund," or the Drinking Water State Revolving Fund, as appropriate, and from any net earnings received from the investment and reinvestment of such deposits, such sums as the chairman of the trust shall certify to the Commissioner of Environmental Protection to be necessary and appropriate for deposit into one or more reserve funds established by the trust pursuant to section 11 of P.L.1985, c.334 (C.58:11B-11).

12. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 159

AN ACT authorizing the expenditure of funds by the New Jersey Environmental Infrastructure Trust for the purpose of making loans to eligible project sponsors to finance a portion of the cost of construction of environmental infrastructure projects, and supplementing P.L.1985, c.334 (C.58:11B-1 et seq.).

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

1. a. The New Jersey Environmental Infrastructure Trust, established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, is authorized to expend the aggregate sum of up to \$100,000,000, and any unexpended balance of the aggregate expenditures authorized pursuant to section 1 of P.L.2000, c.93, section 1 of P.L.2001, c.224 and section 1 of P.L.2002, c.71 for the purpose of making loans, to the extent sufficient funds are available, to or on behalf of local government units or public water utilities (hereinafter referred to as "project sponsors") to finance

a portion of the cost of construction of environmental infrastructure projects listed in sections 2 and 4 of this act.

b. The trust is authorized to increase the aggregate sums specified in subsection a. of this section by:

(1) the amounts of capitalized interest and the bond issuance expenses as provided in subsection b. of section 7 of this act;

(2) the amounts of reserve capacity expenses and debt service reserve fund requirements as provided in subsection c. of section 7 of this act;

(3) the interest earned on amounts deposited for project costs pending their distribution to project sponsors as provided in subsection d. of section 7 of this act; and

(4) the amounts of the loan origination fee as provided in subsection e. of section 7 of this act.

c. For the purposes of this act:

(1) "capitalized interest" means the amount equal to interest paid on trust bonds which is funded with trust bond proceeds and the earnings thereon;

(2) "issuance expenses" means and includes, but need not be limited to, the costs of financial document printing, bond insurance premiums or other credit enhancement, underwriters' discount, verification of financial calculations, the services of bond rating agencies and trustees, the employment of accountants, attorneys, financial advisors, loan servicing agents, registrars, and paying agents, and any other costs related to the issuance of trust bonds;

(3) "reserve capacity expenses" means those project costs for reserve capacity not eligible for loans under rules and regulations governing zero interest loans adopted by the Commissioner of Environmental Protection pursuant to section 4 of P.L.1985, c.329 but which are eligible for loans from the trust in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27);

(4) "debt service reserve fund expenses" means the debt service reserve fund costs associated with reserve capacity expenses, water supply projects for which the project sponsors are public water utilities as provided in section 9 of P.L.1985, c.334 (C.58:11B-9), and other drinking water projects not eligible for, or interested in, State or federal debt service reserve funds pursuant to the "Water Supply Bond Act of 1981," P.L.1981, c.261, as amended and supplemented by P.L.1997, c.223; and

(5) "loan origination fee" means the fee charged by the Department of Environmental Protection and financed under the trust loan to pay a portion of the costs incurred by the department in the implementation of the New Jersey Environmental Infrastructure Financing Program.

d. The trust is authorized to increase the loan amount in the future to compensate for a refunding of the issue, provided adequate savings are achieved, for the loans issued pursuant to P.L.1989, c.190, P.L.1990, c.97,

P.L.1991, c.324, P.L.1992, c.37, P.L.1993, c.192, P.L.1994, c.105, P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93, P.L.2001, c.224, P.L.2002, c.71 and P.L.2003, c.159.

2. a. (1) The New Jersey Environmental Infrastructure Trust is authorized to expend funds for the purpose of making supplemental loans to or on behalf of the project sponsors listed below for the following clean water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340641-01-1	Camden City	\$1,300,000
340325-02-1	Monmouth County	
	Bayshore OA	\$ 300,000
340454-03-1	Warren County	
	(Pequest River) MUA	<u>\$1,600,000</u>
	TOTAL	<u>\$3,200,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the chairman of the trust in State fiscal years 2002 and 2003, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 6 of this act.

(3) The loans authorized in this subsection shall have priority over the environmental infrastructure projects listed in subsection a. of section 4 of this act.

b. (1) The trust is authorized to expend funds for the purpose of making supplemental loans to or on behalf of the project sponsors listed below for the following drinking water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0408001-003-1	Camden City	\$1,900,000
0408001-009-1	Camden City	\$1,000,000
0424001-001-1	Merchantville-Pennsauken WC	<u>\$ 500,000</u>

TOTAL

\$3,400,000

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the chairman of the trust in State fiscal years 2002 and 2003, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 6 of this act.

(3) The loans authorized in this subsection shall have priority over the environmental infrastructure projects listed in subsection b. of section 4 of this act.

3. a. The New Jersey Environmental Infrastructure Trust is authorized to make loans to or on behalf of the project sponsors for the clean water projects listed in subsection a. of section 2 and subsection a. of section 4 of this act up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the trust pursuant to subsection a. of section 7 of this act, or if a project fails to meet the requirements of section 6 of this act. The trust is authorized to increase any such amount pursuant to subsection b., c., d. or e. of section 7 or section 8 of this act.

b. The trust is authorized to make loans to project sponsors for the drinking water projects listed in subsection b. of section 2 and subsection b. of section 4 of this act up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the trust pursuant to subsection a. of section 7 of this act, or if a project fails to meet the requirements of section 6 of this act. The trust is authorized to increase any such amount pursuant to subsection b., c., d. or e. of section 7 or section 8 of this act.

4. a. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2004 Clean Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340926-01	Paterson City	\$3,300,000
340399-20	North Bergen Township MUA	\$14,900,000

340944-01	Chesterfield Township	\$ 700,000
340921-05	Millville City	\$1,600,000
340547-09	Rahway Valley SA	\$ 500,000
340803-04	Hackettstown MUA	\$1,100,000
340547-07	Rahway Valley SA	\$12,800,000
343045-01	Cape May City	\$1,300,000
340640-08	Camden County MUA	\$2,800,000
343037-01	Burlington County BCF	\$ 500,000
343027-01	Edison Township	\$ 300,000
343010-02	Brick Township	\$1,100,000
340945-01	Old Bridge MUA	\$1,000,000
340437-11	New Brunswick City	\$1,300,000
343039-01	Manalapan Township	\$ 800,000
343030-03	Montville Township	\$ 300,000
343034-02	Readington Township	\$ 100,000
343012-01	Clinton Township	\$3,100,000
343047-01	Byram Township (Morris LC)	\$ 500,000
340957-01	Fairfield Township	\$1,300,000
343048-01	Lebanon Township (New Jersey Water Supply Authority)	\$ 700,000
343049-01	Peapack-Gladstone Borough	\$1,000,000
340778-03	West Paterson Borough	\$ 600,000
342007-03	Burlington County BCF	\$8,000,000
340299-06	Linden-Roselle SA	\$7,300,000
340641-02	Camden City	\$1,400,000
340844-01	Clifton City	\$ 400,000
340435-06	Perth Amboy City	\$1,100,000
340969-03	Berkeley Township SA	\$2,400,000
340858-02	Cranford Township	\$1,200,000
340029-02	Secaucus Town	\$2,000,000
340873-01	Clinton Township SA	\$ 400,000
340362-02	Harrison Township	\$1,200,000
340569-03	Byram Township	\$ 200,000
340363-02/03	Runnemede SA	\$ 400,000
340305-01	Barrington Borough	\$ 600,000
340882-05	Lambertville SA	\$ 900,000
340842-02	High Bridge Borough	\$ 100,000
	TOTAL	<u>\$79,200,000</u>

b. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2004 Drinking Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
0601001-001	Bridgeton City	\$1,000,000
061001-001	Millville City	\$ 900,000
1505004-001	Berkeley Township MUA	\$4,500,000
16113001-003/ 004/010/011	North Jersey District Water Supply Commission	\$5,400,000
0408001-010	Camden City	\$3,100,000
1518001-001/002	Cedar Glen Homes	\$ 300,000
1517001-005/006	Long Beach Township	\$1,600,000
0604001-004	Bayview Water Company	\$ 400,000
1111001-003	Trenton City	\$4,600,000
1209002-003	Old Bridge MUA	\$1,000,000
1415001-001/ 003/007	Fayson Lake Water Company	\$ 700,000
1225001-017	Middlesex Water Company	\$5,100,000
1604001-001	Hawthorne Borough	\$1,500,000
0708001-002	Glen Ridge Borough	\$ 700,000
1209002-004	Old Bridge MUA	\$2,100,000
2108001-001/002	Hackettstown MUA	\$ 300,000
0811002-001	Monroe Township MUA	\$3,400,000
1504001-002	Beachwood Borough	\$ 300,000
1510001-001	Island Heights Borough	\$ 300,000
0324001-003	Mount Laurel Township MUA	<u>\$ 700,000</u>
	TOTAL	<u>\$37,900,000</u>

5. In accordance with and subject to the provisions of sections 5, 6 and 23 of P.L.1985, c.334 (C.58:11B-5, 58:11B-6, and 58:11B-23) and as set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21), or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1), any proceeds from bonds issued by the trust to make loans for priority environmental infrastructure projects listed in sections 2 and 4 of this act which are not expended for that purpose may be applied for the payment of all or any part of the principal of and interest and premium on the trust bonds whether due at stated maturity, the interest payment dates or earlier upon redemption. A portion of the proceeds from bonds issued by the trust to make loans for priority environmental infrastructure projects pursuant to this act may be applied for the payment of capitalized interest and for the payment of any issuance expenses; for the payment of reserve capacity expenses; for the payment of debt service reserve fund expenses; and for the payment of increased costs as defined and determined in accordance with the rules

and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

6. Any loan made by the New Jersey Environmental Infrastructure Trust pursuant to this act shall be subject to the following requirements:

a. The chairman of the trust has certified that the project is in compliance with the provisions of P.L.1977, c.224, P.L.1985, c.334, P.L.1992, c.88, P.L.1997, c.223, P.L.1997, c.224, P.L.1997, c.225 or P.L.1999, c.175, and any rules and regulations adopted pursuant thereto. In making this certification, the chairman may conclusively rely on the project review conducted by the Department of Environmental Protection without any independent review thereof by the trust;

b. The loan shall be conditioned upon approval of a zero interest loan from the Department of Environmental Protection from the "Water Supply Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," (P.L.1981, c.261), as amended by P.L.1983, c.355 and amended and supplemented by P.L.1997, c.223, the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985" (P.L.1985, c.329), or the Drinking Water State Revolving Fund established pursuant to section 1 of P.L.1998, c.84;

c. The loan shall be repaid within a period not to exceed 20 years of the making of the loan;

d. The loan shall not exceed the allowable project cost of the environmental infrastructure facility, exclusive of capitalized interest and issuance expenses as provided in subsection b. of section 7 of this act, reserve capacity expenses and the debt service reserve fund expenses as provided in subsection c. of section 7 of this act, interest earned on project costs as provided in subsection d. of section 7 of this act, the amounts of the loan origination fee as provided in subsection e. of section 7 of this act, refunding increases as provided in section 8 of this act and increased costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27);

e. The loan shall bear interest, exclusive of any late charges or administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the project sponsors receiving trust loans, at or below the interest rate paid by the trust on the bonds issued to make or refund the loans authorized by this act, adjusted for underwriting discount and original issue discount or premium, in accordance with the terms and conditions set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21) or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1); and

f. The loan shall be subject to all other terms and conditions as the trust shall determine to be consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) and any rules and regulations adopted pursuant thereto, and with the financial plan required by section 21 of P.L.1985, c.334 (C.58:11B-21) or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1).

The priority lists and authorization for the making of loans pursuant to this act shall expire on July 1, 2004, and any project sponsor which has not executed and delivered a loan agreement with the trust for a loan authorized in this act shall no longer be entitled to that loan.

7. a. The New Jersey Environmental Infrastructure Trust is authorized to reduce the individual amount of loan funds made available to or on behalf of project sponsors pursuant to sections 2 and 4 of this act based upon final building costs defined in and determined in accordance with rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27) or rules and regulations adopted by the Commissioner of Environmental Protection pursuant to section 4 of P.L.1985, c.329, section 11 of P.L.1977, c.224 (C.58:12A-11) or section 5 of P.L.1981, c.261. The trust is authorized to use any such reduction in the loan amount made available to a project sponsor to cover that project sponsor's increased costs due to differing site conditions or other allowable expenses as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

b. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the amount of capitalized interest and issuance expenses allocable to each loan made by the trust pursuant to this act; provided that the increase for issuance expenses, excluding underwriters' discount, original issue discount or premiums, municipal bond insurance premiums and bond rating agency fees, shall not exceed 0.4% of the principal amount of trust bonds issued to make loans authorized by this act.

c. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the amount of reserve capacity expenses, and by the debt service reserve fund expenses associated with such reserve capacity expenses or associated with loans issued to owners of public water utilities, as may be allowed for the project by the trust in accordance with rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

d. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the interest earned on amounts deposited for project costs pending their distribution to project sponsors.

e. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the loan origination fee.

8. The New Jersey Environmental Infrastructure Trust is authorized to increase the individual amount of loan funds made available to project sponsors by the trust pursuant to P.L.1989, c.190, P.L.1990, c.97, P.L.1991, c.324, P.L.1992, c.37, P.L.1993, c.192, P.L.1994, c.105, P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93, P.L.2001, c.224, P.L.2002, c.71 or P.L.2003, c.159, provided that adequate savings are achieved, to compensate for a refunding of trust bonds issued to make loans authorized by the aforementioned acts.

9. The expenditure of funds authorized pursuant to this act is subject to the provisions of P.L.1977, c.224 (C.58:12A-1 et seq.), P.L.1985, c.329, P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, P.L.1992, c.88, P.L.1997, c.223, P.L.1997, c.225 or P.L.1999, c.175, and the rules and regulations adopted pursuant thereto, and the provisions of the Federal Clean Water Act or the Federal Safe Drinking Water Act, as appropriate.

10. This act shall take effect immediately.

Approved August 15, 2003.

CHAPTER 160

AN ACT concerning the membership of the Executive Commission on Ethical Standards and amending P.L.1971, c.182.

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

1. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to read as follows:

C.52:13D-21 Executive Commission on Ethical Standards; penalties for persons found guilty by commission.

10. (a) The Executive Commission on Ethical Standards created pursuant to P.L.1967, chapter 229 is continued and established in the Department of Law and Public Safety and shall constitute the first commission under P.L.1971, c.182 (C.52:13D-12 et al.).

(b) The commission shall be composed of nine members as follows: seven members appointed by the Governor from among State officers and employees serving in the Executive Branch; and two public members appointed by the Governor, not more than one of whom shall be of the same political party.

Each member appointed from the Executive Branch shall serve at the pleasure of the Governor during the term of office of the Governor appointing the member and until the member's successor is appointed and qualified. The public members shall serve for terms of four years and until the appointment and qualification of their successors, but of the public members first appointed, one shall serve for a term of two years and one shall serve for a term of four years. The Governor shall designate one member to serve as chairman and one member to serve as vice-chairman of the commission.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments but, in the case of public members, for the unexpired term only. None of the public members shall be State officers or employees or special State officers or employees, except by reason of their service on the commission. A public member may be reappointed for subsequent terms on the commission.

(c) Each member of the said commission shall serve without compensation but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of the member's duties.

(d) The Attorney General shall act as legal adviser and counsel to the said commission. The Attorney General shall upon request advise the commission in the rendering of advisory opinions by the commission, in the approval and review of codes of ethics adopted by State agencies in the Executive Branch and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of State officers and employees in the Executive Branch.

(e) The said commission may, within the limits of funds appropriated or otherwise made available to it for the purpose, employ such other professional, technical, clerical or other assistants, excepting legal counsel, and incur such expenses as may be necessary for the performance of its duties.

(f) The said commission, in order to perform its duties pursuant to the provisions of P.L.1971, c.182 (C.52:13D-12 et al.), shall have the power to conduct investigations, hold hearings, compel the attendance of witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. The members of the said commission and the persons appointed by the commission for such purpose are hereby empowered to administer oaths and examine witnesses under oath.

(g) The said commission is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of P.L.1971, c.182 (C.52:13D-12 et

al.) or of a code of ethics promulgated pursuant to the provisions of P.L. 1971, c. 182 (C.52:13D-12 et al.).

(h) The said commission shall have jurisdiction to initiate, receive, hear and review complaints regarding violations, by any State officer or employee or special State officer or employee in the Executive Branch, of the provisions of P.L. 1971, c. 182 (C.52:13D-12 et al.) or of any code of ethics promulgated pursuant to the provisions of P.L. 1971, c. 182 (C.52:13D-12 et al.). Any complaint regarding a violation of a code of ethics may be referred by the commission for disposition in accordance with subsection (d) of section 12 of P.L. 1971, c. 182 (C.52:13D-23).

(i) Any State officer or employee or special State officer or employee found guilty by the commission of violating any provision of P.L. 1971, c. 182 (C.52:13D-12 et al.) or of a code of ethics promulgated pursuant to the provisions of P.L. 1971, c. 182 (C.52:13D-12 et al.) shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to "The Penalty Enforcement Law of 1999," P.L. 1999, c. 274 (C.2A:58-10 et seq.), and may be suspended from his office or employment by order of the commission for a period of not in excess of one year. If the commission finds that the conduct of such officer or employee constitutes a willful and continuous disregard of the provisions of P.L. 1971, c. 182 (C.52:13D-12 et al.) or of a code of ethics promulgated pursuant to the provisions of P.L. 1971, c. 182 (C.52:13D-12 et al.), it may order such person removed from his office or employment and may further bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of not exceeding five years from the date on which the person was found guilty by the commission.

(j) The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.

2. During the period commencing with the effective date of P.L. 2003, c. 160 and ending on the date on which all of the public members of the Executive Commission on Ethical Standards first appointed shall have qualified, in determining whether a quorum exists for the purposes of convening a meeting of the commission and of conducting official business thereat, only those public members who shall have qualified as of the date on which the meeting is held shall be considered as included in the membership of the commission.

3. This act shall take effect immediately.

Approved August 20, 2003.

CHAPTER 161

AN ACT increasing the fine for parking in a restricted parking space and amending R.S.39:4-197.

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

1. R.S.39:4-197 is amended to read as follows:

Ordinance or resolution on matters covered by chapter.

39:4-197. Except as otherwise provided in R.S.39:4-8, no municipality shall pass an ordinance or resolution on a matter covered by or which alters or in any way nullifies the provisions of this chapter or any supplement to this chapter; except that a municipality may pass ordinances or resolutions, or by ordinances or resolutions may authorize the adoption of regulations by the board, body or official having control of traffic in the public streets, regulating special conditions existent in the municipality on the subjects and within the limitations following:

- (1) Ordinance.
 - a. Altering speed limitations as provided in R.S.39:4-98;
 - b. Limiting use of streets to certain class of vehicles;
 - c. Designating one-way streets;
 - d. Regulating the stopping or starting of street cars at special places, such as railroad stations, public squares or in front of certain public buildings;
 - e. Regulating the passage or stopping of traffic at certain congested street corners or other designated points;
 - f. Regulating the parking of vehicles on streets and portions thereof, including angle parking as provided in R.S.39:4-135;
 - g. Regulating the parking of vehicles upon land owned or leased and maintained by the municipality, a parking authority or the board of education of a school district, including any lands devoted to the public parking of vehicles, the entrances thereto and exits therefrom;
 - h. Regulating the entrances to and exits from parking yards and parking places which are open to the public or to which the public is invited, except that this shall not apply to entrances or exits to and from State highways;
 - i. Designating streets or roads upon which buses and trucks over four tons gross weight may be required not to exceed specially fixed limits based on engineering and traffic investigation and to use a lower gear in descending steep declivities having a grade in excess of 5% fixing such special speed limits and providing for the use of such a gear thereon.

- (2) Ordinance or resolution.

a. Designating through streets, as provided in article 17 of this chapter (R.S.39:4-140 et seq.);

b. Designating and providing for the maintenance as "no passing" zones of portions of highway where overtaking and passing or driving to the left of the roadway is deemed especially hazardous.

(3) Ordinance, resolution or regulation.

a. Designating stops, stations or stands for omnibuses and taxis;

b. Designating curbside loading zones;

c. Designating restricted parking spaces for use by persons who have been issued special vehicle identification cards by the Division of Motor Vehicles pursuant to the provisions of P.L.1949, c.280 (C.39:4-204 et seq.) and section 1 of P.L.1977, c.202 (C.39:4-197.5). Any person parking a motor vehicle in a restricted parking space without a special vehicle identification card shall be liable to a fine of \$250 for the first offense and, for subsequent offenses, a fine of at least \$250 and up to 90 days' community service on such terms and in such form as the court shall deem appropriate, or any combination thereof.

2. This act shall take effect on the first day of the second month after enactment.

Approved August 22, 2003.

CHAPTER 162

AN ACT authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the aggregate principal amount of \$200,000,000 for the purposes of dam restoration and repair projects, lake dredging and restoration projects, stream cleaning and desnagging projects, flood control projects, water resources projects, and wastewater treatment system projects; providing the ways and means to pay and discharge the principal of and interest on the bonds; providing for the submission of this act to the people at a general election; and making an appropriation therefor.

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

1. This act shall be known and may be cited as the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003."

2. The Legislature finds and declares that the condition of many dams, lakes, and streams throughout the State has been deteriorating at an alarming rate due to a chronic lack of maintenance, and that the deterioration was exacerbated by unusually heavy amounts of rainfall during the summer of 2000, particularly the storms occurring on August 12, 2000 and August 13, 2000 that created a state of emergency in several counties.

The Legislature further finds and declares that these conditions have led to collapsed dams, polluted lakes, stream flooding and property damage to homes, businesses, lake communities and public utilities; that federal, State and local financial resources have not met adequately the costs of remediating the sites and facilities affected by these conditions; and that owners of these facilities must often select the least costly option of decommissioning or abandoning these important elements of infrastructure.

The Legislature therefore determines that it is in the public interest to provide additional funding for State programs that are responsible for remediating, and for providing assistance to other public or private entities to remediate, the conditions described herein.

The Legislature further finds and declares that the State of New Jersey, as a result of its location in a climate subject to heavy rains, its high population density, its high degree of urbanization and the need for additional or upgraded flood control facilities is continually threatened by flooding and flood damage of an extreme nature.

The Legislature therefore determines that it is in the public interest to provide additional funding for State programs that are responsible for financing the cost of flood control projects.

The Legislature further finds and declares that protecting the ground and surface water of the State from pollution is vital to the health and general welfare of the citizens of New Jersey; that the upgrading, improvement, and construction of modern and efficient wastewater treatment systems is essential to protecting and improving water quality; and that in addition to protecting and improving water quality by upgrading facilities operating below the standards set forth in their permits, adequate wastewater treatment systems are essential in areas in this State where septic systems have malfunctioned or become obsolete, or in areas where it is necessary to connect customers of an obsolete or malfunctioning wastewater treatment system to an existing system.

The Legislature further finds and declares that New Jersey, already the most densely populated and highly industrialized state in the nation, continues to experience deterioration of its water resources; that these resources, by virtue of their capacity to sustain substantial reserves of potable water, constitute not only an invaluable and irreplaceable asset to the present citizens of New Jersey, but also, a trust for future generations; and that as the steward of that

trust, it is incumbent upon the State to commit itself to the preservation in perpetuity of those resources indispensable to the continued supply of clean water and to the health and welfare of its citizens; and that the State must commit itself to the restoration of lakes and reservoirs, the establishment of new water impoundments, the interconnection of existing water supply systems, and the extension of water supplies into areas with polluted groundwater supplies.

The Legislature therefore determines that it is in the public interest to provide additional funding for State programs that are responsible for financing the cost of water resources projects and new or upgraded wastewater treatment systems.

3. As used in this act:

"Bonds" mean the bonds authorized to be issued, or issued, under this act;

"Combined sewer system" means a sewer system designed to carry sanitary wastewater at all times, which is also designed to collect and transport stormwater runoff from streets and other sources, thereby serving a combined purpose;

"Combined sewer overflow" means the discharge of untreated or partially treated stormwater runoff and wastewater from a combined sewer system into a body of water;

"Commission" means the New Jersey Commission on Capital Budgeting and Planning;

"Commissioner" means the Commissioner of Environmental Protection;

"Cost" means the expenses incurred in connection with: the funding of dam restoration and repair projects, lake dredging and restoration projects, stream cleaning and desnagging projects, flood control projects, water resources projects, or wastewater treatment system projects; the interest or discount on bonds; the issuance of bonds; the procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice, including the services of a bond registrar or an authenticating agent; the issuance of bonds, or any interest or discount thereon; the administrative, organizational, operating, or other expenses incident to the financing and completing of any project authorized by this act; the establishment of a reserve fund or funds for working capital, operating, maintenance, or replacement expenses and for the payment or security of principal or interest on bonds, as the Director of the Division of Budget and Accounting in the Department of the Treasury may determine; the cost of all labor, materials, machinery and equipment, lands, property, rights and easements, financing charges, interest on bonds, notes or other obligations, plans and specifications, surveys or estimates of costs and revenues, engineering

and legal services, and all other expenses necessary or incident to all or part of any project authorized by this act; reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by this act, or of any moneys which may have been expended therefrom for, or in connection with, any project authorized by this act; and the administrative cost to the local government unit acting as a co-applicant to owners of private dams, or to private lake associations;

"Dam restoration and repair project" means the repair, restoration, construction, reconstruction, or demolition of dams, bulkheads, retention or detention basins, or other structures that impound water for water supply purposes, flood control, or recreation, wildlife habitat or fire protection;

"Department" means the New Jersey Department of Environmental Protection or any agency or department successor to its power and responsibilities;

"Flood control project" means the repair, restoration, construction, reconstruction, or demolition of dams, drainage ways, structures and other real and personal property acquired, constructed, operated, financed, maintained or improved or to be acquired, constructed, operated, financed, maintained or improved for the purposes of flood control, and other plants, structures, boats, conveyances and other real or personal property and rights therein, and appurtenances necessary for the control of flooding, including the development of comprehensive flood management plans;

"Government securities" means any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any federal agency, to the extent those obligations are unconditionally guaranteed by the United States of America, and any certificates or any other evidences of an ownership interest in those obligations of, or unconditionally guaranteed by, the United States of America or in specified portions which may consist of the principal of, or the interest on, those obligations;

"Lake dredging and restoration project" means the removal of sand, silt, mud, sediment, rocks, stumps, vegetation, algae blooms, or other materials from lakes, or the abatement and control of pollution of lakes caused by stormwater runoff, soil erosion, or other types of nonpoint source or point source pollution, to improve, for the purposes of flood control, the use or function of any lake, natural area, fishing, boating, or swimming area or facility, dam, or flood control facility or structure associated with a lake;

"Local government unit" means: (1) with respect to dam restoration and repair projects, lake dredging and restoration projects, or stream cleaning and desnagging projects, a county or a municipality, or any agency, authority, board, commission, or other instrumentality thereof, any two or more counties or municipalities operating jointly through a joint meeting or interlocal services

agreement permitted by law, or any agency, authority, board, commission, or other instrumentality thereof, and any other local or regional entity created by the Legislature as a political subdivision of the State, or any agency, authority, board, commission, or other instrumentality thereof; (2) with respect to wastewater treatment system projects, a State authority, county, municipality, municipal, county or regional sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority, or any other political subdivision of the State authorized to construct, operate and maintain wastewater treatment systems; or (3) with respect to water resources projects, a State authority, district water supply commission, county, municipality, municipal, county or regional utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption;

"Public water utility" means any investor-owned water company or small water company;

"Stormwater management system" means any equipment, plants, structures, machinery, apparatus, management practices, or land, or any combination thereof, acquired, used, constructed, implemented or operated to prevent nonpoint source pollution, abate improper cross-connections and interconnections between stormwater and sewer systems, minimize stormwater runoff, reduce soil erosion, or induce groundwater recharge, or any combination thereof;

"Stream cleaning and desnagging project" means the removal of accumulated sediments, debris, garbage, or vegetation from a stream with a natural stream bed, or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material, to improve, for the purposes of flood control, the use or function of any stream;

"Trust" means the New Jersey Environmental Infrastructure Trust created pursuant to section 4 of P.L.1985, c.334 (C.58:11B-4);

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewage, septage, stormwater runoff, or any combination thereof, or other liquid residue discharged or collected into a sewer system or stormwater management system, or any combination thereof;

"Wastewater treatment system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by, or on behalf of, a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the collection or treatment, or both, of stormwater runoff and wastewater, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, treatment plants and works, connections, outfall sewers, interceptors, trunk lines, stormwater management systems,

and other personal property and appurtenances necessary for their use or operation; "wastewater treatment system" shall include a stormwater management system or a combined sewer system; and

"Wastewater treatment system project" means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to any wastewater treatment system that meets the requirements set forth in sections 20, 21 and 22 of P.L. 1985, c.334 (C.58:11B-20, 58:11B-21 and 58:11B-22); or any work relating to any of the stormwater management or combined sewer overflow abatement projects identified in the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner pursuant to section 28 of P.L. 1989, c.181; or any work relating to any other project eligible for financing under the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any amendatory or supplementary acts thereto;

"Water resources project" means any work related to transferring water between public water systems during a state of water emergency, to avert a drought emergency in all or any part of the State, to plan, design or construct interconnections of existing water supplies, or to extend water supplies to areas with contaminated ground water supplies;

"Water supply facilities" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part, by or on behalf of a public water utility, or by or on behalf of the State or a local government unit, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water, and for the preservation and protection of these resources and facilities, whether in public or private ownership, and providing for the conservation and development of future water supply resources and facilitating incidental recreational uses thereof.

4. The commissioner shall adopt, pursuant to the "Administrative Procedure Act," P.L. 1968 c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act. The commissioner shall review and consider the findings and recommendations of the commission in the administration of the provisions of this act.

5. a. Bonds of the State of New Jersey are authorized to be issued in the aggregate principal amount of \$150,000,000 for the purposes of financing the costs of dam restoration and repair projects, lake dredging and restoration projects, stream cleaning and desnagging projects, and State flood control projects, all as hereinafter provided.

b. Of the total principal amount authorized pursuant to subsection a. of this section:

(1) \$15,000,000 is allocated to the department to finance the costs of State dam restoration and repair projects;

(2) \$95,000,000 is allocated to the department for the purpose of providing loans or other forms of assistance other than full or matching grants to owners of private dams, as co-applicants with local government units, or to local government units that own dams, to finance the costs of dam restoration and repair projects undertaken by, or on behalf of, the owners of dams;

(3) \$15,000,000 is allocated to the department for the purpose of providing loans or other forms of assistance other than full or matching grants to owners of lakes or streams and private lake associations to finance the costs of lake dredging and restoration projects, or stream cleaning and desnagging projects, undertaken by, or on behalf of, the owners of lakes or streams or private lake associations; and

(4) \$25,000,000 is allocated to the department to finance the costs of State flood control projects.

c. Any loan authorized under this section shall include up to 100% of the cost of a dam restoration and repair project, lake dredging and restoration project, or stream cleaning and desnagging project.

d. Loans made to owners of private dams, or to local government units that own dams, or to owners of lakes or streams, or to private lake associations, with local government units as co-applicants, from the "2003 Dam, Lake and Stream Project Revolving Loan Fund" established pursuant to section 17 of this act shall bear interest of not more than 2 percent per year, shall be for a term of 20 years, and shall be made in accordance with criteria for existing programs established under previous State general obligation bond acts, legislative initiatives, or federal aid guidelines.

e. Any loan authorized under this section shall be provided under the terms and conditions set forth in a written loan agreement between the department and the person or entity receiving the loan.

f. (1) Loans awarded under this section to owners of private dams, or to private lake associations, shall require local government units to act as co-applicants. The cost of payment of the principal and interest on any loan made to the owner of a private dam, or to a private lake association, as a co-applicant with a local government unit, shall be assessed, in the same manner as provided for the assessment of local improvements generally under chapter 56 of Title

40 of the Revised Statutes, against the real estate benefited thereby in proportion to and not in excess of the benefits conferred, and such assessments shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the municipality where they are imposed, and from the date of confirmation shall be a first and paramount lien upon the real estate assessed to the same extent, and be enforced and collected in the same manner, as assessments for local improvements.

(2) Notwithstanding the provisions of paragraph (1) of this subsection or of any other law to the contrary, no project for which loans to owners of dams or lake associations are awarded under this section shall be considered a municipal capital improvement, nor shall the amount of any such loan be considered part of the municipal capital budget, and no such loan shall be subject to the review or approval of the Local Finance Board established under P.L.1974, c.35 (C.52:27D-18.1).

g. The department shall administer the program authorized pursuant to this section in accordance with criteria for existing programs established under previous State general obligation bond acts, legislative initiatives, or federal aid guidelines. The department shall notify every local government unit, dam or lake owner, and private lake association of the availability of, and the criteria for qualifying and obtaining, loans or other forms of assistance under the program.

h. Payments of principal and interest on loans made from the "2003 Dam, Lake and Stream Project Revolving Loan Fund" established under section 17 of this act shall be returned to that fund for use for any authorized purpose to which moneys in the fund may be used.

6. a. Bonds of the State of New Jersey are authorized to be issued in the aggregate principal amount of \$50,000,000 for the purpose of financing the costs of water resources projects or wastewater treatment system projects.

b. Of the total amount of bonds authorized pursuant to subsection a. of this section:

(1) \$45,000,000 is allocated to the department for the purpose of providing loans to, or on behalf of, local government units or public water utilities to finance the costs of water resources projects or to make improvements to water supply facilities, or to provide loans to, or on behalf of, local government units to finance the costs of wastewater treatment system projects, as designated and authorized pursuant to the project priority list adopted by the commissioner pursuant to section 24 of P.L.1997, c.224 (C.58:11B-20.1) and section 31 of this act; and

(2) \$5,000,000 is allocated for payment to, and use by, the trust in establishing reserves and providing loan guarantees pursuant to sections 19 and 20 of this act.

c. Payments of principal and interest on loans made from the "2003 Water Resources and Wastewater Treatment Fund" shall be returned to that fund for use for any authorized purpose to which moneys in the fund may be used.

7. The bonds authorized under this act shall be serial bonds, term bonds, or a combination thereof, and shall be known as "2003 Dam, Lake, Stream, Water Resources, and Wastewater Treatment Project Bonds." They shall be issued from time to time as the issuing officials herein named shall determine and may be issued in coupon form, fully-registered form or book-entry form. The bonds may be subject to redemption prior to maturity and shall mature and be paid not later than 35 years from the respective dates of their issuance.

8. The Governor, the State Treasurer and the Director of the Division of Budget and Accounting in the Department of the Treasury, or any two of these officials, herein referred to as "the issuing officials," are authorized to carry out the provisions of this act relating to the issuance of bonds, and shall determine all matters in connection therewith, subject to the provisions of this act. If an issuing official is absent from the State or incapable of acting for any reason, the powers and duties of that issuing official shall be exercised and performed by the person authorized by law to act in an official capacity in the place of that issuing official.

9. Bonds issued in accordance with the provisions of this act shall be a direct obligation of the State of New Jersey, and the faith and credit of the State are pledged for the payment of the interest and redemption premium thereon, if any, when due, and for the payment of the principal thereof at maturity or earlier redemption date. The principal of and interest on the bonds shall be exempt from taxation by the State or by any county, municipality or other taxing district of the State.

10. The bonds shall be signed in the name of the State by means of the manual or facsimile signature of the Governor under the Great Seal of the State, which seal may be by facsimile or by way of any other form of reproduction on the bonds, and attested by the manual or facsimile signature of the Secretary of State, or an Assistant Secretary of State, and shall be countersigned by the facsimile signature of the Director of the Division of Budget and Accounting in the Department of the Treasury and may be manually authenticated by an authenticating agent or bond registrar, as the issuing official shall determine. Interest coupons, if any, attached to the bonds shall be signed by the facsimile signature of the Director of the Division of Budget and Accounting in the Department of the Treasury. The bonds may be issued notwithstanding that an official signing them or whose manual or facsimile

signature appears on the bonds or coupons has ceased to hold office at the time of issuance, or at the time of the delivery of the bonds to the purchaser thereof.

11. a. The bonds shall recite that they are issued for the purposes set forth in sections 5 and 6 of this act, that they are issued pursuant to this act, that this act was submitted to the people of the State at the general election held in the month of November, 2003, and that this act was approved by a majority of the legally qualified voters of the State voting thereon at the election. This recital shall be conclusive evidence of the authority of the State to issue the bonds and their validity. Any bonds containing this recital shall, in any suit, action or proceeding involving their validity, be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed and delivered in conformity herewith and with all other provisions of laws applicable hereto, and shall be incontestable for any cause.

b. The bonds shall be issued in those denominations and in the form or forms, whether coupon, fully-registered or book-entry, and with or without provisions for interchangeability thereof, as may be determined by the issuing officials.

12. When the bonds are issued from time to time, the bonds of each issue shall constitute a separate series to be designated by the issuing officials. Each series of bonds shall bear such rate or rates of interest as may be determined by the issuing officials, which interest shall be payable semiannually; except that the first and last interest periods may be longer or shorter, in order that intervening semiannual payments may be at convenient dates.

13. The bonds shall be issued and sold at the price or prices and under the terms, conditions and regulations as the issuing officials may prescribe, after notice of the sale, published at least once in at least three newspapers published in this State, and at least once in a publication carrying municipal bond notices and devoted primarily to financial news, published in this State or in the city of New York, the first notice to appear at least five days prior to the day of bidding. The notice of sale may contain a provision to the effect that any bid in pursuance thereof may be rejected. In the event of rejection or failure to receive any acceptable bid, the issuing officials, at any time within 60 days from the date of the advertised sale, may sell the bonds at a private sale at such price or prices under the terms and conditions as the issuing officials may prescribe. The issuing officials may sell all or part of the bonds of any series as issued to any State fund or to the federal government or any agency thereof, at a private sale, without advertisement.

14. Until permanent bonds are prepared, the issuing officials may issue temporary bonds in the form and with those privileges as to their registration and exchange for permanent bonds as may be determined by the issuing officials.

15. The proceeds from the sale of bonds used to provide assistance other than full or matching grants to owners of dams, lakes or streams, or private lake associations, for dam restoration and repair projects, lake dredging and restoration projects, or stream cleaning and desnagging projects, and for State flood control projects or State dam restoration and repair projects, shall be paid to the State Treasurer and be held by the State Treasurer in a separate fund, and be deposited in such depositories as may be selected by the State Treasurer to the credit of the fund, which fund shall be known as the "2003 Dam, Lake, Stream and Flood Control Project Fund."

16. a. The moneys in the "2003 Dam, Lake, Stream and Flood Control Project Fund" are specifically dedicated and shall be applied to the cost of assistance other than full or matching grants to owners of dams, lakes or streams, or private lake associations, for dam restoration and repair projects, lake dredging and restoration projects, or stream cleaning and desnagging projects, and for State flood control projects or State dam restoration and repair projects as set forth in section 5 of this act. However, no moneys in the fund shall be expended for those purposes, except as otherwise authorized by this act, without the specific appropriation thereof by the Legislature, but bonds may be issued as herein provided, notwithstanding that the Legislature shall not have then adopted an act making a specific appropriation of any of the moneys. Any act appropriating moneys from the "2003 Dam, Lake, Stream and Flood Control Project Fund" shall identify the project to be funded by the moneys.

b. At any time prior to the issuance and sale of bonds under this act, the State Treasurer is authorized to transfer from any available moneys in any fund of the treasury of the State to the credit of the "2003 Dam, Lake, Stream and Flood Control Project Fund" those sums as the State Treasurer may deem necessary. The sums so transferred shall be returned to the same fund of the treasury of the State by the State Treasurer from the proceeds of the sale of the first issue of bonds.

c. Pending their application to the purposes provided in this act, the moneys in the "2003 Dam, Lake, Stream and Flood Control Project Fund" may be invested and reinvested as are other trust funds in the custody of the State Treasurer, in the manner provided by law. Net earnings received from the investment or deposit of moneys in the "2003 Dam, Lake, Stream and Flood Control Project Fund" shall be paid into the General Fund.

17. The proceeds from the sale of bonds used to provide loans to owners of dams, lakes or streams, or private lake associations, for dam restoration and repair projects, lake dredging and restoration projects, or stream cleaning and desnagging projects, shall be paid to the State Treasurer and be held by the State Treasurer in a separate fund, and be deposited in such depositories as may be selected by the State Treasurer to the credit of the fund, which fund shall be known as the "2003 Dam, Lake and Stream Project Revolving Loan Fund."

18. a. The moneys in the "2003 Dam, Lake and Stream Project Revolving Loan Fund" are specifically dedicated and shall be applied to the cost of making low-interest loans to owners of dams, lakes or streams, or private lake associations, for dam restoration and repair projects, lake dredging and restoration projects, or stream cleaning and desnagging projects, as set forth in section 5 of this act. However, no moneys in the fund shall be expended for those purposes, except as otherwise authorized by this act, without the specific appropriation thereof by the Legislature, but bonds may be issued as herein provided, notwithstanding that the Legislature shall not have then adopted an act making a specific appropriation of any of the moneys. Any act appropriating moneys from the "2003 Dam, Lake and Stream Project Revolving Loan Fund" shall identify the project to be funded by the moneys.

b. Loans issued from the "2003 Dam, Lake and Stream Project Revolving Loan Fund" shall be for a term as determined by the commissioner not to exceed 20 years and at an interest rate determined by the commissioner not to exceed 2 percent per year. The terms of any loan agreement shall be approved by the State Treasurer. Any loan made from the "2003 Dam, Lake and Stream Project Revolving Loan Fund" shall be awarded pursuant to section 5 of this act based upon the criteria and procedures established for existing programs under previous State general obligation bond acts, legislative initiatives, or federal aid guidelines as provided in section 5 of this act, except that no matching funds shall be required of loan applicants.

c. At any time prior to the issuance and sale of bonds under this act, the State Treasurer is authorized to transfer from any available moneys in any fund of the treasury of the State to the credit of the "2003 Dam, Lake and Stream Project Revolving Loan Fund" those sums as the State Treasurer may deem necessary. The sums so transferred shall be returned to the same fund of the treasury of the State by the State Treasurer from the proceeds of the sale of the first issue of bonds.

d. Pending their application to the purposes provided in this act, the moneys in the "2003 Dam, Lake and Stream Project Revolving Loan Fund" may be invested and reinvested as are other trust funds in the custody of the State Treasurer, in the manner provided by law. All repayments of loans made

pursuant to this act, and interest thereon, shall be deposited in the "2003 Dam, Lake and Stream Project Revolving Loan Fund." Earnings received from moneys in the fund shall be credited to the fund.

19. a. The proceeds from the sale of bonds allocated pursuant to paragraph (1) of subsection b. of section 6 of this act shall be paid to the State Treasurer for deposit in a separate nonlapsing revolving fund, which shall be known as the "2003 Water Resources and Wastewater Treatment Fund," for use by the department as hereinafter provided.

b. The proceeds from the sale of bonds allocated pursuant to paragraph (2) of subsection b. of section 6 of this act shall be paid to the State Treasurer for deposit in a separate nonlapsing revolving fund, which shall be known as the "2003 Water Resources and Wastewater Treatment Trust Fund," for use by the trust as hereinafter provided.

20. a. (1) The moneys in the "2003 Water Resources and Wastewater Treatment Fund" are specifically dedicated and shall be applied to the cost of the purposes set forth in paragraph (1) of subsection b. of section 6 of this act. However, no moneys in the fund shall be expended for those purposes, except as otherwise authorized by this act, without the specific appropriation thereof by the Legislature, but bonds may be issued as herein provided, notwithstanding that the Legislature shall not have then adopted an act making a specific appropriation of any of the moneys. Any act appropriating moneys from the "2003 Water Resources and Wastewater Treatment Fund" shall identify the project to be funded by the moneys. Payments of principal and interest on loans made from the "2003 Water Resources and Wastewater Treatment Fund" shall be returned to that fund for use for any authorized purpose to which moneys in the fund may be used pursuant to subsection b. of section 6 of this act.

The department is authorized to use moneys in the "2003 Water Resources and Wastewater Treatment Fund" to cover administrative expenses incurred in implementing the provisions of this act, subject to the annual appropriation thereof by the Legislature.

(2) Payments of principal and interest on loans returned to the "2003 Water Resources and Wastewater Treatment Fund" may be made available to the trust, with the concurrence of the department, for temporary use by the trust for any of the purposes set forth in paragraph (3) of this subsection, under terms and conditions established therefor by the commissioner and the trust and approved by the State Treasurer.

Any moneys made available to the trust pursuant to this paragraph shall be deposited in a separate nonlapsing revolving fund, which shall be known as the "2003 Water Resources and Wastewater Treatment Trust Fund," for

use by the trust as hereinafter provided. The trust shall repay to the "2003 Water Resources and Wastewater Treatment Fund" any moneys made available for temporary use. Repayment shall be in accordance with the terms and conditions approved therefor.

(3) The moneys in the "2003 Water Resources and Wastewater Treatment Trust Fund" are specifically dedicated and allocated to, and shall be applied to the cost of, the establishment by the trust of reserve and loan guarantee accounts within that fund. The reserve account is to be used to secure debt issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.); and the guarantee account is to be used by the trust to secure debt issued by a local government unit. The trust shall not directly or indirectly use any moneys paid to it pursuant to this paragraph for the purpose of issuing a loan guarantee in connection with the financing of a water resources project or a wastewater treatment system project, unless the project, and the amount and the terms or conditions of the loan guarantee, shall have been approved by the Legislature.

Moneys in the reserve and loan guarantee accounts may be made available to the department, with the concurrence of the trust, for temporary use by the department in implementing the provisions of this act, under terms and conditions established therefor by the commissioner and the trust and approved by the State Treasurer. The department shall repay to the "2003 Water Resources and Wastewater Treatment Trust Fund" any sums made available for temporary use. Repayment shall be in accordance with the terms and conditions approved therefor.

(4) Moneys in the "2003 Water Resources and Wastewater Treatment Fund" may be transferred to the trust for use as set forth in paragraph (3) of this subsection.

b. At any time prior to the issuance and sale of bonds under this act, the State Treasurer is authorized to transfer from any available moneys in any fund of the treasury of the State to the credit of the "2003 Water Resources and Wastewater Treatment Fund" or the "2003 Water Resources and Wastewater Treatment Trust Fund" those sums as the State Treasurer may deem necessary. The sums so transferred shall be returned to the same fund of the treasury of the State by the State Treasurer from the proceeds of the sale of the first issue of bonds.

c. Pending their application to the purposes provided in this act, the moneys in the "2003 Water Resources and Wastewater Treatment Fund" may be invested and reinvested as are other trust funds in the custody of the State Treasurer, in the manner provided by law, and moneys in the "2003 Water Resources and Wastewater Treatment Trust Fund" may be invested and reinvested by the trust as are other trust funds in the custody of the trust.

Net earnings received from the investment or deposit of moneys in the "2003 Water Resources and Wastewater Treatment Fund" shall be paid into

that fund, and net earnings received from the investment or deposit of moneys in the "2003 Water Resources and Wastewater Treatment Trust Fund" shall be paid to that fund for use by the trust to cover administrative expenses incurred in administering that fund. Any moneys not required for administrative expenses shall be used for any other authorized purpose to which moneys in the "2003 Water Resources and Wastewater Treatment Trust Fund" may be used.

d. The trust may charge and collect annually from local government units fees and charges in connection with any loans, guarantees or other services provided by the trust, in amounts sufficient to reimburse the trust for all reasonable costs necessarily incurred in connection therewith, and in connection with the establishment and maintenance of reserve or other funds, as the trust may determine to be reasonable.

21. If any coupon bond, coupon or registered bond is lost, mutilated or destroyed, a new bond or coupon shall be executed and delivered of like tenor, in substitution for the lost, mutilated or destroyed bond or coupon, upon the owner furnishing to the issuing officials evidence satisfactory to them of the loss, mutilation or destruction of the bond or coupon, the ownership thereof, and security, indemnity and reimbursement for expenses connected therewith, as the issuing officials may require.

22. The accrued interest, if any, received upon the sale of the bonds shall be applied to the discharge of a like amount of interest upon the bonds when due. Any expense incurred by the issuing officials for advertising, engraving, printing, clerical, authenticating, registering, legal or other services necessary to carry out the duties imposed upon them by the provisions of this act shall be paid from the proceeds of the sale of the bonds by the State Treasurer, upon the warrant of the Director of the Division of Budget and Accounting in the Department of the Treasury, in the same manner as other obligations of the State are paid.

23. Bonds of each series issued hereunder shall mature, including any sinking fund redemptions, not later than the 35th year from the date of issue of that series, and in amounts as shall be determined by the issuing officials. The issuing officials may reserve to the State by appropriate provision in the bonds of any series the power to redeem any of the bonds prior to maturity at the price or prices and upon the terms and conditions as may be provided in the bonds.

24. Any bond or bonds issued hereunder which are subject to refinancing pursuant to the "Refunding Bond Act of 1985," P.L.1985, c.74 as amended by P.L.1992, c.182 (C.49:2B-1 et seq.), shall no longer be deemed to be

outstanding, shall no longer constitute a direct obligation of the State of New Jersey, and the faith and credit of the State shall no longer be pledged to the payment of the principal of, redemption premium, if any, and interest on the bonds, and the bonds shall be secured solely by and payable solely from moneys and government securities deposited in trust with one or more trustees or escrow agents, which trustees and escrow agents shall be trust companies or national or state banks having powers of a trust company, located either within or without the State, as provided herein, whenever there shall be deposited in trust with the trustees or escrow agents, as provided herein, either moneys or government securities, including government securities issued or held in book-entry form on the books of the Department of the Treasury of the United States, the principal of and interest on which when due will provide money which, together with the moneys, if any, deposited with the trustees or escrow agents at the same time, shall be sufficient to pay when due the principal of, redemption premium, if any, and interest due and to become due on the bonds on or prior to the redemption date or maturity date thereof, as the case may be; provided the government securities shall not be subject to redemption prior to their maturity other than at the option of the holder thereof. The State of New Jersey hereby covenants with the holders of any bonds for which government securities or moneys shall have been deposited in trust with the trustees or escrow agents as provided in this section that, except as otherwise provided in this section, neither the government securities nor moneys so deposited with the trustees or escrow agents shall be withdrawn or used by the State for any purpose other than, and shall be held in trust for, the payment of the principal of, redemption premium, if any, and interest to become due on the bonds; provided that any cash received from the principal or interest payments on the government securities deposited with the trustees or escrow agents, to the extent the cash will not be required at any time for that purpose, shall be paid over to the State, as received by the trustees or escrow agents, free and clear of any trust, lien, pledge or assignment securing the bonds; and to the extent the cash will be required for that purpose at a later date, shall, to the extent practicable and legally permissible, be reinvested in government securities maturing at times and in amounts sufficient to pay when due the principal of, redemption premium, if any, and interest to become due on the bonds on and prior to the redemption date or maturity date thereof, as the case may be, and interest earned from the reinvestments shall be paid over to the State, as received by the trustees or escrow agents, free and clear of any trust, lien or pledge securing the bonds. Notwithstanding anything to the contrary contained herein: a. the trustees or escrow agents shall, if so directed by the issuing officials, apply moneys on deposit with the trustees or escrow agents pursuant to the provisions of this section, and redeem or sell government securities so deposited with the trustees or escrow agents, and apply the proceeds thereof to (1) the purchase

of the bonds which were refinanced by the deposit with the trustees or escrow agents of the moneys and government securities and immediately thereafter cancel all bonds so purchased, or (2) the purchase of different government securities; provided however, that the moneys and government securities on deposit with the trustees or escrow agents after the purchase and cancellation of the bonds or the purchase of different government securities shall be sufficient to pay when due the principal of, redemption premium, if any, and interest on all other bonds in respect of which the moneys and government securities were deposited with the trustees or escrow agents on or prior to the redemption date or maturity date thereof, as the case may be; and b. in the event that on any date, as a result of any purchases and cancellations of bonds or any purchases of different government securities, as provided in this sentence, the total amount of moneys and government securities remaining on deposit with the trustees or escrow agents is in excess of the total amount which would have been required to be deposited with the trustees or escrow agents on that date in respect of the remaining bonds for which the deposit was made in order to pay when due the principal of, redemption premium, if any, and interest on the remaining bonds, the trustees or escrow agents shall, if so directed by the issuing officials, pay the amount of the excess to the State, free and clear of any trust, lien, pledge or assignment securing the refunding bonds.

25. Refunding bonds issued pursuant to P.L.1985, c.74 as amended by P.L.1992, c.182 (C.49:2B-1 et seq.) may be consolidated with bonds issued pursuant to sections 5 and 6 of this act or with bonds issued pursuant to any other act for purposes of sale.

26. To provide funds to meet the interest and principal payment requirements for the bonds and refunding bonds issued under this act and outstanding, there is appropriated in the order following:

a. Revenue derived from the collection of taxes under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), or so much thereof as may be required; and

b. If, at any time, funds necessary to meet the interest, redemption premium, if any, and principal payments on outstanding bonds issued under this act are insufficient or not available, there shall be assessed, levied and collected annually in each of the municipalities of the counties of this State, a tax on the real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued hereunder and on the bonds proposed to be issued under this act in the calendar year in which the tax is to be raised and for the payment of bonds falling due in the year following the year for which the tax is levied. The tax shall be assessed, levied and collected in the same manner

and at the same time as are other taxes upon real and personal property. The governing body of each municipality shall cause to be paid to the county treasurer of the county in which the municipality is located, on or before December 15 in each year, the amount of tax herein directed to be assessed and levied, and the county treasurer shall pay the amount of the tax to the State Treasurer on or before December 20 in each year.

If on or before December 31 in any year, the issuing officials, by resolution, determine that there are moneys in the General Fund beyond the needs of the State, sufficient to pay the principal of bonds falling due and all interest and redemption premium, if any, payable in the ensuing calendar year, the issuing officials shall file the resolution in the office of the State Treasurer, whereupon the State Treasurer shall transfer the moneys to a separate fund to be designated by the State Treasurer, and shall pay the principal, redemption premium, if any, and interest out of that fund as the same shall become due and payable, and the other sources of payment of the principal, redemption premium, if any, and interest provided for in this section shall not then be available, and the receipts for the year from the tax specified in subsection a. of this section shall be considered and treated as part of the General Fund, available for general purposes.

27. Should the State Treasurer, by December 31 of any year, deem it necessary, because of the insufficiency of funds collected from the sources of revenues as provided in this act, to meet the interest and principal payments for the year after the ensuing year, then the State Treasurer shall certify to the Director of the Division of Budget and Accounting in the Department of the Treasury the amount necessary to be raised by taxation for those purposes, the same to be assessed, levied and collected for and in the ensuing calendar year. The director shall, on or before March 1 following, calculate the amount in dollars to be assessed, levied and collected in each county as herein set forth. This calculation shall be based upon the corrected assessed valuation of each county for the year preceding the year in which the tax is to be assessed, but the tax shall be assessed, levied and collected upon the assessed valuation of the year in which the tax is assessed and levied. The director shall certify the amount to the county board of taxation and the treasurer of each county. The county board of taxation shall include the proper amount in the current tax levy of the several taxing districts of the county in proportion to the ratables as ascertained for the current year.

28. For the purpose of complying with the provisions of the State Constitution, this act shall be submitted to the people at the general election next occurring at least 70 days after enactment. To inform the people of the contents of this act, it shall be the duty of the Attorney General, after this section

takes effect, and at least 60 days prior to the election, to cause this act to be published at least once in one or more newspapers of each county, if any newspapers be published therein and to notify the clerk of each county of this State of the passage of this act; and the clerks respectively, in accordance with the instructions of the Attorney General, shall have printed on each of the ballots the following:

If you approve of the act entitled below, make a cross (x), plus (+), or check (✓) mark in the square opposite the word "Yes."

If you disapprove of the act entitled below, make a cross (x), plus (+), or check (✓) mark in the square opposite the word "No."

	YES	<p style="text-align: center;">DAM, LAKE, STREAM, FLOOD CONTROL, WATER RESOURCES, AND WASTEWATER TREATMENT BOND ISSUE</p> <p>Shall the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," which authorizes the State to issue bonds in the amount of \$200,000,000 for the purposes of providing financing for the restoration and repair of dams, the dredging and restoration of lakes, the cleaning and desnagging of streams to diminish flooding and property damage therefrom, and providing financing for flood control projects, water resources projects and wastewater treatment system projects, and providing the ways and means to pay the interest on the debt and also to pay and discharge the principal thereof, be approved?</p>
	NO	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>Approval of this act would authorize the sale of \$200,000,000 in State general obligation bonds to be used for the purposes of providing \$15,000,000 to restore and repair State-owned dams, \$95,000,000 in low-interest loans to owners of dams for dam restoration and repair projects, and \$15,000,000 in low-interest loans to owners of lakes and streams and private lake associations, with local governments as co-applicants, for lake dredging and restoration, or stream cleaning and desnagging projects, necessary to diminish severe flooding in the State; \$25,000,000 to finance State flood control projects, and \$50,000,000 for water resources projects and wastewater treatment system projects.</p>

If voting machines are used, a vote of "Yes" or "No" shall be equivalent to these markings respectively.

The fact and date of the approval or passage of this act, as the case may be, may be inserted in the appropriate place after the title in the ballot. No other requirements of law of any kind or character as to notice or procedure, except as herein provided, need be adhered to.

The votes so cast for and against the approval of this act, by ballot or voting machine, shall be counted and the result thereof returned by the election officer, and a canvass of the election had in the same manner as is provided for by law in the case of the election of a Governor, and the approval or disapproval of this act so determined shall be declared in the same manner as the result of an election for a Governor, and if there is a majority of all the votes cast for and against it at the election in favor of the approval of this act, then all the provisions of this act not made effective theretofore shall take effect forthwith.

29. The commissioner shall submit to the State Treasurer and the commission with the department's annual budget request a plan for the expenditure of funds from the "2003 Dam, Lake, Stream and Flood Control Project Fund" and the "2003 Dam, Lake and Stream Revolving Loan Fund" for the upcoming fiscal year. This plan shall include the following information: a performance evaluation of the expenditures made from the funds to date; a description of programs planned during the upcoming fiscal year; a copy of the regulations in force governing the operation of programs that are financed, in part or in whole, by funds from the "2003 Dam, Lake, Stream and Flood Control Project Fund" and the "2003 Dam, Lake and Stream Revolving Loan Fund;" and an estimate of expenditures for the upcoming fiscal year.

30. Immediately following the submission to the Legislature of the Governor's annual budget message, the commissioner shall submit to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their designated successors, and to the Joint Budget Oversight Committee, or its successor, a copy of the plan called for under section 29 of this act, together with such changes therein as may have been required by the Governor's budget message.

31. The commissioner shall, on or before January 15 of each year, develop and submit to the Legislature a priority system for water resources projects and wastewater treatment system projects and shall establish the ranking criteria and funding policies for the projects therefor. The commissioner shall set forth a water resources project and wastewater treatment system project priority list for funding for each fiscal year and shall include the aggregate amount of funds to be authorized for these purposes. No moneys shall be expended for loans in a fiscal year for any water resources project or wastewater treatment system project unless the expenditure is authorized pursuant to an appropriations act.

As part of the annual submission required by this section, the department and the trust shall each provide a financial accounting of all project expenditures made in the preceding year, and of all administrative expenses incurred by

the trust from interest earnings from the "2003 Water Resources and Wastewater Treatment Trust Fund" in connection therewith.

32. There is appropriated the sum of \$5,000 to the Department of Law and Public Safety for expenses in connection with the publication of notice pursuant to section 28 of this act.

33. All appropriations from the "2003 Dam, Lake, Stream and Flood Control Project Fund," the "2003 Dam, Lake and Stream Revolving Loan Fund," and the "2003 Water Resources and Wastewater Treatment Fund" shall be by specific project allocation and any transfer of any funds so appropriated shall require the approval of the Joint Budget Oversight Committee, or its successor. All appropriations from the "2003 Dam, Lake, Stream and Flood Control Project Fund" and the "2003 Dam, Lake and Stream Revolving Loan Fund" shall also be on a municipal area-by-area basis.

34. This section and sections 28 and 32 of this act shall take effect immediately and the remainder of this act shall take effect as and when provided in section 28.

Approved August 22, 2003.

CHAPTER 163

AN ACT concerning small employer health benefits purchasing alliances and amending and supplementing P.L.1992, c.162.

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

1. Section 9 of P.L.1992, c.162 (C.17B:27A-25) is amended to read as follows:

C.17B:27A-25 Premium rates; other plan requirements.

9. a. (1) (Deleted by amendment, P.L.1997, c.146).

(2) (Deleted by amendment, P.L.1997, c.146).

(3) For all policies or contracts providing health benefits plans for small employers issued pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19), and including policies or contracts offered by a carrier to a small employer who is a member of a Small Employer Purchasing Alliance pursuant to the provisions of P.L.2001, c.225 (C.17B:27A-25.1 et al.) the premium rate charged

by a carrier to the highest rated small group purchasing a small employer health benefits plan issued pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19) shall not be greater than 200% of the premium rate charged for the lowest rated small group purchasing that same health benefits plan; provided, however, that the only factors upon which the rate differential may be based are age, gender and geography, and provided further, that such factors are applied in a manner consistent with regulations adopted by the board. For the purposes of this paragraph (3), policies or contracts offered by a carrier to a small employer who is a member of a Small Employer Purchasing Alliance shall be rated separately from the carrier's other small employer health benefits policies or contracts.

A health benefits plan issued pursuant to subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19) shall be rated in accordance with the provisions of section 7 of P.L.1995, c.340 (C.17B:27A-19.3), for the purposes of meeting the requirements of this paragraph.

(4) (Deleted by amendment, P.L.1994, c.11).

(5) Any policy or contract issued after January 1, 1994 to a small employer who was not previously covered by a health benefits plan issued by the issuing small employer carrier, shall be subject to the same premium rate restrictions as provided in paragraph (3) of this subsection, which rate restrictions shall be effective on the date the policy or contract is issued.

(6) The board shall establish, pursuant to section 17 of P.L.1993, c.162 (C.17B:27A-51):

(a) up to six geographic territories, none of which is smaller than a county; and

(b) age classifications which, at a minimum, shall be in five-year increments.

b. (Deleted by amendment, P.L.1993, c.162).

c. (Deleted by amendment, P.L.1995, c.298).

d. Notwithstanding any other provision of law to the contrary, this act shall apply to a carrier which provides a health benefits plan to one or more small employers through a policy issued to an association or trust of employers.

A carrier which provides a health benefits plan to one or more small employers through a policy issued to an association or trust of employers after the effective date of P.L.1992, c.162 (C.17B:27A-17 et seq.), shall be required to offer small employer health benefits plans to non-association or trust employers in the same manner as any other small employer carrier is required pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.).

e. Nothing contained herein shall prohibit the use of premium rate structures to establish different premium rates for individuals and family units.

f. No insurance contract or policy subject to this act, including a contract or policy entered into with a small employer who is a member of a Small

Employer Purchasing Alliance pursuant to the provisions of P.L.2001, c.225 (C.17B:27A-25.1 et al.), may be entered into unless and until the carrier has made an informational filing with the commissioner of a schedule of premiums, not to exceed 12 months in duration, to be paid pursuant to such contract or policy, of the carrier's rating plan and classification system in connection with such contract or policy, and of the actuarial assumptions and methods used by the carrier in establishing premium rates for such contract or policy.

g. (1) Beginning January 1, 1995, a carrier desiring to increase or decrease premiums for any policy form or benefit rider offered pursuant to subsection i. of section 3 of P.L.1992, c.162 (C.17B:27A-19) subject to this act may implement such increase or decrease upon making an informational filing with the commissioner of such increase or decrease, along with the actuarial assumptions and methods used by the carrier in establishing such increase or decrease, provided that the anticipated minimum loss ratio for all policy forms shall not be less than 75% of the premium therefor as provided in paragraph (2) of this subsection. Until December 31, 1996, the informational filing shall also include the carrier's rating plan and classification system in connection with such increase or decrease.

(2) Each calendar year, a carrier shall return, in the form of aggregate benefits for all of the five standard policy forms offered by the carrier pursuant to subsection a. of section 3 of P.L.1992, c.162 (C.17B:27A-19), at least 75% of the aggregate premiums collected for all of the standard policy forms, other than alliance policy forms, and at least 75% of the aggregate premiums collected for all of the non-standard policy forms during that calendar year. A carrier shall return at least 75% of the premiums collected for all of the alliances during that calendar year, which loss ratio may be calculated in the aggregate for all of the alliances or separately for each alliance. Carriers shall annually report, no later than August 1st of each year, the loss ratio calculated pursuant to this section for all of the standard, other than alliance policy forms, non-standard policy forms and alliance policy forms for the previous calendar year, provided that a carrier may annually report the loss ratio calculated pursuant to this section for all of the alliances in the aggregate or separately for each alliance. In each case where the loss ratio fails to substantially comply with the 75% loss ratio requirement, the carrier shall issue a dividend or credit against future premiums for all policyholders with the standard, other than alliance policy forms, nonstandard policy forms or alliance policy forms, as applicable, in an amount sufficient to assure that the aggregate benefits paid in the previous calendar year plus the amount of the dividends and credits shall equal 75% of the aggregate premiums collected for the respective policy forms in the previous calendar year. All dividends and credits must be distributed by December 31 of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by this paragraph shall include

a carrier's calculation of the dividends and credits applicable to standard, other than alliance policy forms, non-standard policy forms and alliance policy forms, as well as an explanation of the carrier's plan to issue dividends or credits. The instructions and format for calculating and reporting loss ratios and issuing dividends or credits shall be specified by the commissioner by regulation. Such regulations shall include provisions for the distribution of a dividend or credit in the event of cancellation or termination by a policyholder. For purposes of this paragraph, "alliance policy forms" means policies purchased by small employers who are members of Small Employer Purchasing Alliances.

(3) The loss ratio of a health benefits plan issued pursuant to subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19) shall be calculated in accordance with the provisions of section 7 of P.L.1995, c.340 (C.17B:27A-19.3), for the purposes of meeting the requirements of this subsection.

h. (Deleted by amendment, P.L.1993, c.162).

i. The provisions of this act shall apply to health benefits plans which are delivered, issued for delivery, renewed or continued on or after January 1, 1994.

j. (Deleted by amendment, P.L.1995, c.340).

k. A carrier who negotiates a reduced premium rate with a Small Employer Purchasing Alliance for members of that alliance shall provide a reduction in the premium rate filed in accordance with paragraph (3) of subsection a. of this section, expressed as a percentage, which reduction shall be based on volume or other efficiencies or economies of scale and shall not be based on health status-related factors.

2. The Commissioner of Banking and Insurance shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the provisions of this act.

3. This act shall take effect 30 days after enactment.

Approved August 22, 2003.

CHAPTER 164

AN ACT concerning driving under the influence, supplementing Title 40 of the Revised Statutes and amending R.S.40:48-1.

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

C.40:48-1.3 Holding DUI arrestees in protective custody, certain circumstances.

1. a. A municipality may enact an ordinance providing that a person who is arrested for a violation of the provisions of R.S.39:4-50 shall be held in protective custody at an appropriate police or other facility where the person's condition may be monitored until the person is no longer a danger to himself or others. The municipal ordinance shall provide for the release of the person from protective custody when that person is no longer a danger to himself or others. The municipal ordinance may provide that a person is no longer a danger to himself or others when the person's blood alcohol concentration is less than 0.05% and the person is no longer under the influence of any intoxicating liquor or narcotic or hallucinogenic or habit-forming drug to the extent that the person's faculties are impaired. In no event shall a municipality hold a person in protective custody for a period of longer than eight hours without providing an appropriate hearing.

b. Notwithstanding the provisions of any ordinance enacted pursuant to subsection a. of this section, provided that it is not a detriment to the public safety, the arresting law enforcement agency may, because of the age, health or safety of the arrested person, release the person pursuant to the provisions of P.L.2001, c.69 (C.39:4-50.22 et seq.) or provide an appropriate alternative to protective custody. The municipality shall not be subject to liability if a person is released from custody pursuant to the provisions of this subsection.

c. Nothing in this section shall be construed as requiring the use of State Police facilities by a municipality for the purposes of this act.

2. R.S.40:48-1 is amended to read as follows:

Ordinances; general purpose.

40:48-1. Ordinances; general purpose. The governing body of every municipality may make, amend, repeal and enforce ordinances to:

Finances and property. 1. Manage, regulate and control the finances and property, real and personal, of the municipality;

Contracts and contractor's bonds. 2. Prescribe the form and manner of execution and approval of all contracts to be executed by the municipality and of all bonds to be given to it;

Officers and employees; duties, terms and salaries. 3. Prescribe and define, except as otherwise provided by law, the duties and terms of office or employment, of all officers and employees; and to provide for the employment and compensation of such officials and employees, in addition to those provided for by statute, as may be deemed necessary for the efficient conduct of the affairs of the municipality;

Fees. 4. Fix the fees of any officer or employee of the municipality for any service rendered in connection with his office or position, for which no

specific fee or compensation is provided. In the case of salaried officers or employees, such fee shall be paid into the municipal treasury;

Salaries instead of fees; disposition of fees. 5. Provide that any officer or employee receiving compensation for his services, in whole or in part by fees, whether paid by the municipality or otherwise, shall be paid a salary to be fixed in the ordinance, and thereafter all fees received by such officer or employee shall be paid into the municipal treasury;

Maintain order. 6. Prevent vice, drunkenness and immorality; to preserve the public peace and order; to prevent and quell riots, disturbances and disorderly assemblages; to prohibit the consumption of alcoholic beverages by underage persons on private property pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

Punish beggars; prevention of loitering. 7. Restrain and punish drunkards, vagrants, mendicants and street beggars; to prevent loitering, lounging or sleeping in the streets, parks or public places;

Auctions and noises. 8. Regulate the ringing of bells and the crying of goods and other commodities for sale at auction or otherwise, and to prevent disturbing noises;

Swimming; bathing costume; prohibition of public nudity. 9. Regulate or prohibit swimming or bathing in the waters of, in, or bounding the municipality, and to regulate or prohibit persons from appearing upon the public streets, parks and places clad in bathing costumes or robes, or costumes of a similar character; regulate or prohibit persons from appearing in a state of nudity upon all lands within its borders which are under the jurisdiction of the State including, without limitation, all lands owned by, controlled by, managed by or leased by the State;

Prohibit annoyance of persons or animals. 10. Regulate or prohibit any practice tending to frighten animals, or to annoy or injure persons in the public streets;

Animals; pounds; establishment and regulation. 11. Establish and regulate one or more pounds, and to prohibit or regulate the running at large of horses, cattle, dogs, swine, goats and other animals, and to authorize their impounding and sale for the penalty incurred, and the costs of impounding, keeping and sale; to regulate or prohibit the keeping of cattle, goats or swine in any part of the municipality; to authorize the destruction of dogs running at large therein;

Hucksters. 12. Prescribe and regulate the place of vending or exposing for sale articles of merchandise from vehicles;

Building regulations; wooden structures. 13. Regulate and control the construction, erection, alteration and repair of buildings and structures of every kind within the municipality; and to prohibit, within certain limits, the construction, erection or alteration of buildings or structures of wood or other combustible material;

Inflammable materials; inspect docks and buildings. 14. Regulate the use, storage, sale and disposal of inflammable or combustible materials, and to provide for the protection of life and property from fire, explosions and other dangers; to provide for inspections of buildings, docks, wharves, warehouses and other places, and of goods and materials contained therein, to secure the proper enforcement of such ordinance;

Dangerous structures; removal or destruction; procedure. 15. Provide for the removal or destruction of any building, wall or structure which is or may become dangerous to life or health, or might tend to extend a conflagration; and to assess the cost thereof as a municipal lien against the premises;

Chimneys and boilers. 16. Regulate the construction and setting up of chimneys, furnaces, stoves, boilers, ovens and other contrivances in which fire is used;

Explosives. 17. Regulate, in conformity with the statutes of this State, the manufacture, storage, sale, keeping or conveying of gunpowder, nitroglycerine, dynamite and other explosives;

Firearms and fireworks. 18. Regulate and prohibit the sale and use of guns, pistols, firearms, and fireworks of all descriptions;

Soft coal. 19. Regulate the use of soft coal in locomotives, factories, power houses and other places;

Theaters, schools, churches and public places. 20. Regulate the use of theaters, cinema houses, public halls, schools, churches, and other places where numbers of people assemble, and the exits therefrom, so that escape therefrom may be easily and safely made in case of fire or panic; and to regulate any machinery, scenery, lights, wires and other apparatus, equipment or appliances used in all places of public amusement;

Excavations. 21. Regulate excavations below the established grade or curb line of any street, not greater than eight feet, which the owner of any land may make, in the erection of any building upon his own property; and to provide for the giving of notice, in writing, of such intended excavation to any adjoining owner or owners, and that they will be required to protect and care for their several foundation walls that may be endangered by such excavation; and to provide that in case of the neglect or refusal, for 10 days, of such adjoining owner or owners to take proper action to secure and protect the foundations of any adjacent building or other structure, that the party or parties giving such notice, or their agents, contractors or employees, may enter into and upon such adjoining property and do all necessary work to make such foundations secure, and may recover the cost of such work and labor in so protecting such adjacent property; and to make such further and other provisions in relation to the proper conduct and performance of said work as the governing body or board of the municipality may deem necessary and proper;

Sample medicines. 22. Regulate and prohibit the distribution, depositing or leaving on the public streets or highways, public places or private property, or at any private place or places within any such municipality, any medicine, medicinal preparation or preparations represented to cure ailments or diseases of the body or mind, or any samples thereof, or any advertisements or circulars relating thereto, but no ordinance shall prohibit a delivery of any such article to any person above the age of 12 years willing to receive the same;

Boating. 23. Regulate the use of motor and other boats upon waters within or bounding the municipality;

Fire escapes. 24. Provide for the erection of fire escapes on buildings in the municipality, and to provide rules and regulations concerning the construction and maintenance of the same, and for the prevention of any obstruction thereof or thereon;

Care of injured employees. 25. Provide for the payment of compensation and for medical attendance to any officer or employee of the municipality injured in the performance of his duty;

Bulkheads and other structures. 26. Fix and determine the lines of bulkheads or other works or structures to be erected, constructed or maintained by the owners of lands facing upon any navigable water in front of their lands, and in front of or along any highway or public lands of said municipality, and to designate the materials to be used, and the type, height and dimensions thereof;

Lifeguard. 27. Establish, maintain, regulate and control a lifeguard upon any beach within or bordering on the municipality;

Appropriation for life-saving apparatus. 28. Appropriate moneys to safeguard people from drowning within its borders, by location of apparatus or conduct of educational work in harmony with the plans of the United States volunteer life-saving corps in this State;

Fences. 29. Regulate the size, height and dimensions of any fences between the lands of adjoining owners, whether built or erected as division or partition fences between such lands, and whether the same exist or be erected entirely or only partly upon the lands of any such adjoining owners, or along or immediately adjacent to any division or partition line of such lands. To provide, in such ordinance, the manner of securing, fastening or shoring such fences, and for surveying the land when required by statute, and to prohibit in any such ordinance the use at a height of under 10 feet from the ground, of any device, such as wire or cable, that would be dangerous to pedestrians, equestrians, bicyclists, or drivers of off-the-road vehicles, unless that device is clearly visible to pedestrians, equestrians, bicyclists or drivers of off-the-road vehicles. In the case of fences thereafter erected contrary to the provisions thereof, the governing body may provide for a penalty for the violation of such ordinance, and in the case of such fence or fences erected or existing

at the time of the passage of any such ordinance, may provide therein for the removal, change or alteration thereof, so as to make such fence or fences comply with the provisions of any such ordinance;

Advertise municipality. 30. Appropriate funds for advertising the advantages of the municipality;

Government Energy Aggregation Programs. 31. Establish programs and procedures pursuant to which the municipality may act as a government aggregator pursuant to sections 40 through 43 of P.L.1999, c.23 (C.48:3-89 through C.48:3-92), section 45 of P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003, c.24 (C.48:3-93.1 through C.48:3-93.3). Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality acting as a government aggregator pursuant to P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating any form of public utility service pursuant to R.S.40:62-1 et seq., to the extent such municipality is solely engaged in the provision of such aggregation service and not otherwise owning or operating any plant or facility for the production or distribution of gas, electricity, steam or other product as provided in R.S.40:62-12;

Joint municipal action on consent for the provision of cable television service. 32. Establish programs and procedures pursuant to which a municipality may act together with one or more municipalities in granting municipal consent for the provision of cable television service pursuant to the provisions of the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented. Notwithstanding the provisions of any other law, rule or regulation to the contrary, two or more municipalities acting jointly pursuant to the provisions of P.L.1972, c.186 (C.48:5A-1 et seq.) shall not be deemed a public utility pursuant to R.S.48:1-1 et seq., to the extent those municipalities are solely engaged in granting municipal consent jointly and are not otherwise owning or operating any facility for the provision of cable television service as provided in P.L.1972, c.186 (C.48:5A-1 et seq.);

Private cable television service aggregation programs. 33. Establish programs and procedures pursuant to which a municipality may employ the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent for the provision of cable television service provided that any such municipality shall adhere to the provisions of the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented, and to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as amended and supplemented. Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality that employs the services of a private aggregator pursuant to the provisions of P.L.1972, c.186 (C.48:5A-1

et seq.) shall not be deemed a public utility pursuant to R.S.48:1-1 et seq., to the extent that the municipality is solely engaged in employing the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent and is not otherwise owning or operating any facility for the provision of cable television service as provided in P.L.1972, c.186 (C.48:5A-1 et seq.);

Protective Custody. 34. Provide protective custody to persons arrested for operating a motor vehicle under the influence of alcoholic beverages, any chemical substance, or any controlled dangerous substance in violation of R.S.39:4-50 as provided in section 1 of P.L.2003, c.164 (C.40:48-1.3).

3. This act shall take effect immediately.

Approved August 27, 2003.

CHAPTER 165

AN ACT providing a sales and use tax exemption for certain sales at State-owned residential veterans' facilities and supplementing P.L.1966, c.30 (C.54:32B-1 et seq.)

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

C.54:32B-8.54 Residential veterans' facilities, sales, certain, exempt from sales and use tax.

1. Receipts from sales at concession stands located in or on the grounds of a State-owned and operated residential veterans' facility operated pursuant to N.J.S.38A:3-6, are exempt from the tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.).

2. This act shall take effect immediately and apply to sales commencing on or after the first day of the fourth month following enactment.

Approved August 31, 2003.

CHAPTER 166

AN ACT concerning the Business Employment Incentive Program and amending and supplementing P.L.1996, c.26.

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

1. Section 2 of P.L.1996, c.26 (C.34:1B-125) is amended to read as follows:

C.34:1B-125 Definitions relative to business employment incentives.

2. As used in sections 1 through 17 of P.L.1996, c.26 (C.34:1B-124 et seq.) and in sections 9 through 11 of P.L.2003, c.166 (C.34:1B-139.1 through C.34:1B-139.3), unless a different meaning clearly appears from the context:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

"Advanced computing company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes;

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

"Advanced materials company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes;

"Application year" means the grant year for which an eligible partnership submits the information required under section 8 of P.L.1996, c.26 (C.34:1B-131);

"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

"Base years" means the first two complete calendar years following the effective date of an agreement;

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

"Biotechnology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or

providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision;

"Bonds means bonds, notes or other obligations issued by the authority pursuant to this act;

"Business" means a corporation; sole proprietorship; partnership; corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners; limited liability company; nonprofit corporation; or any other form of business organization located either within or outside this State. A grant received under this act by a partnership, Subchapter S-Corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-Corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed;

"Business employment incentive agreement" or "agreement" means the written agreement between the authority and a business proposing a project in this State in accordance with the provisions of this act which establishes the terms and conditions of a grant to be awarded pursuant to this act;

"Department" means the New Jersey Commerce and Economic Growth Commission;

"Designated industry" means a business engaged in the field of biotechnology, pharmaceuticals, financial services or transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology;

"Director" means the Director of the Division of Taxation;

"Division" means the Division of Taxation in the Department of the Treasury;

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

"Electronic device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes;

"Eligible partnership" means a partnership or limited liability company that is qualified to receive a grant as established in this act;

"Eligible position" is a new full-time position created by a business in New Jersey or transferred from another state by the business under the terms and conditions set forth in this act during the base years or in subsequent years of a grant. In determining if positions are eligible positions, the authority shall give greater consideration to positions that average at least 1.5 times the minimum hourly wage during the term of an agreement authorized pursuant to this act. For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. "Eligible position" also includes all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in this act during the base years or in subsequent years of a grant. An "eligible position" shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a "new employee" because prior to relocation his wages or his distributive share of income from a gain, from a loss or deduction, or his guaranteed payments or any combination thereof, prior to the relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An "eligible position" shall also include a position occupied by a resident of another State whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq. An "eligible position" shall not include any position located within New Jersey, which, within a period either three months prior to the business' application for a grant under this act or six months after the date of application, ceases to exist or be located within New Jersey;

"Employment incentive" means the amount of a grant determined pursuant to subsection a. of section 6 of this act;

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources;

"Environmental technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of environmental technology for the purpose of developing or providing products or processes for specific commercial or public purposes;

"Estimated tax" means an amount calculated for a partner in an eligible position equal to 6.37% of the lesser of (i) the amount of the partner's net income

from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner's Schedule NJK-1 of the application year less the amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in column B of the partner's Schedule NJK-1 in the foundation year, or (ii) the net of all items of partnership income upon which tax has been paid as reflected on the partner's New Jersey Gross Income Tax return in the application year;

"Foundation year" means the year immediately prior to the creation of the eligible position;

"Full-time employee" means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the authority to be employed in a permanent position according to criteria it develops, or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business;

"Grant" means a business employment incentive grant as established in this act;

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration;

"Medical device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes;

"Net income from the eligible partnership" means the net combination of a partner's distributive share of the eligible partnership's income, gain, loss, deduction, or guaranteed payments;

"New employee" means a full-time employee first employed in an eligible position on the project which is the subject of an agreement or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share

of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; except that such a New Jersey resident whose position is relocated to this State shall not be classified as a "new employee" unless his wages, or his distributive share of income from a gain, from a loss or deduction, or his guaranteed payments or any combination thereof, prior to the relocation, were subject to income taxes imposed by the state or municipality in which the position was previously located. "New employee" may also include an employee rehired or called back from a layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. "New employee" shall not include any employee who was previously employed in New Jersey by the business or by a related person as defined in section 2 of P.L.1993, c.170 (C.54:10A-5.5) if the employee is transferred to the business which is the subject of an agreement unless the employee's position at his previous employer is filled by a new employee. "New employee" also shall not include a child, grandchild, parent or spouse of an individual associated with the business who has direct or indirect ownership of at least 15% of the profits, capital, or value of the business. New employee shall also include an employee whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq.;

"Partner" means a person who is entitled to either a distributive share of a partnership's income, gain, loss or deduction, or guaranteed payments, or any combination thereof, by virtue of holding an interest in the partnership. "Partner" also includes a person who is a member of a limited liability company which is treated as a partnership, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.;

"Refunding Bonds" means bonds, notes or other obligations issued to refinance bonds, notes or other obligations previously issued by the authority pursuant to the provision of this act;

"Residual withholdings" means for any period of time, the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under this act over the cumulative anticipated grant amounts;

"Schedule NJK-1" means Schedule NJK-1 as the form existed for taxable year 1997;

"Withholdings" means the amount withheld by a business from the wages of new employees or estimated taxes paid by, or on behalf of, partners that are new employees, or any combination thereof, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and, if the new employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.54A:1-1

et seq., the amount of withholding that would occur if the employee were to move to New Jersey.

2. Section 4 of P.L.1996, c.26 (C.34:1B-127) is amended to read as follows:

C.34:1B-127 Project requirements.

4. a. A business may apply to the authority for a grant for any project which:
- (1) Will create at least 25 eligible positions in the base years; or
 - (2) Will create at least 10 eligible positions in the base years if the business is an advanced computing company, an advanced materials company, a biotechnology company, an electronic device technology company, an environmental technology company, or a medical device technology company.
- b. In the case of a business which is a landlord, the business may apply to the authority for a grant for any project in which at least 25 eligible positions are created in the base years.
- c. A project which consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant under this act. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant, and only the withholdings from new employees which are employed in the portion of the project which represents non-retail facilities shall be used to determine the amount of the grant. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant. For the purposes of this act, catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

3. Section 5 of P.L.1996, c.26 (C.34:1B-128) is amended to read as follows:

C.34:1B-128 Grant application.

5. A business shall apply to the authority for a grant on a form prescribed by the authority which shall include:
- a. The name of the business, the proposed location of the project, and the type of activity which will be engaged in at the project site;
 - b. The names and addresses of the principals or management of the business, and the nature of the form of business organization under which it is operated;
 - c. The most recent financial statement of the business;
 - d. The number of eligible positions proposed to be created during the base years and thereafter; and
 - e. An estimate of the total withholdings.

4. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read as follows:

C.34:1B-129 Employment incentive grant criteria.

6. a. The amount of the employment incentive awarded as a grant in each case shall be not less than 10% and not more than 50% of the withholdings of the business, or not less than 10% and not more than 30% of the estimated tax of partners of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of such partner's account, or any combination thereof, and shall be subject to the provisions of sections 10 and 11 of this act. In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of \$50,000 for all new employees over the term of the grant. The employment incentive shall be based on criteria developed by the authority after considering the following:

- (1) The number of eligible positions to be created;
- (2) The expected duration of those positions;
- (3) The type of contribution the business can make to the long-term growth of the State's economy;
- (4) The amount of other financial assistance the business will receive from the State for the project;
- (5) The total dollar investment the business is making in the project;
- (6) Whether the business is a designated industry;
- (7) Impact of the business on State tax revenues; and
- (8) Such other related factors determined by the authority.

b. A business may be eligible to be awarded a grant of up to 80% of the withholdings of the business or up to 50% of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200) as determined by and based upon criteria promulgated by the authority following consultation with the Department of Community Affairs, Office of Smart Growth.

c. The term of the grant shall not exceed 10 years.

d. At the discretion of the authority, the grant may apply to new employees or partners in eligible positions created during the base years, and during the remainder of the term of the grant.

5. Section 8 of P.L.1996, c.26 (C.34:1B-131) is amended to read as follows:

C.34:1B-131 Submission of NJ tax return, other information; audit.

8. a. No later than March 1 of each year, for the preceding grant year, every business which is awarded a grant under this act shall submit to the authority a copy of its applicable New Jersey tax return within 30 days of filing showing business income and withholdings as a condition of its continuation in the grant program, together with an annual payroll report showing (1) the eligible positions which were created during the base years and (2) the new eligible positions created during each subsequent year of the grant. Should any business which is awarded a grant under this act fail to submit to the authority a copy of its annual payroll report or submit its annual payroll report without the information required by (1) and (2) above, any grant payment to be received by any such business shall be forfeited for the applicable reporting year unless the Executive Director of the authority determines that there are extenuating circumstances excusing the timely filing required herein.

b. The division may require by regulation any information which it deems necessary to effectuate the provisions of this act.

c. The authority may cause an audit of any business receiving a grant to be conducted at any time.

6. Section 11 of P.L.1996, c.26 (C.34:1B-134) is amended to read as follows:

C.34:1B-134 Grant limitations.

11. a. A business that is receiving a business relocation grant pursuant to the provisions of P.L. 1996, c. 25 (C.34:1B-112 et seq.) shall not be eligible to receive a grant under this act except upon the approval of the State Treasurer.

b. A business that is receiving any other grant by operation of State law shall not receive an amount as a grant pursuant to this act which, when combined with such other grants, exceeds the total of 50% of its withholdings or 30% of its estimated tax, or any combination thereof paid, except upon the approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.) shall be excluded from the calculation of the total amount permitted under this subsection.

c. A business that qualifies under subsection b. of section 6 of P.L. 1996, c.26 (C.34:1B-129) for a grant of up to 80% of its withholdings or up to 50% of its estimated tax and is receiving any other grant by operation of State law shall not receive an amount as a grant pursuant to this act which, when combined with such other grants, exceeds the total of up to 80% of its withholdings or 50% of the estimated tax, or any combination thereof paid except upon approval of the State Treasurer. Amounts received as grants from the Office of

Customized Training pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.) shall be excluded from the calculation of the total amount permitted under this subsection.

7. Section 14 of P.L.1996, c.26 (C.34:1B-137) is amended to read as follows:

C.34:1B-137 Rules.

14. The New Jersey Economic Development Authority, after consultation with the department and the Division of Taxation, shall in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules necessary to implement the provisions of the Business Employment Incentive Program not related to the collection or determination of taxes and tax withholding. The rules shall provide for the recipients of business employment incentive grants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the program. The Director of the Division of Taxation is authorized to promulgate those rules necessary to effectuate the tax related provisions of the Business Employment Incentive Program.

8. Section 15 of P.L.1996, c.26 (C.34:1B-138) is amended to read as follows:

C.34:1B-138 Annual report.

15. The New Jersey Commerce and Economic Growth Commission shall submit a report on the Business Employment Incentive Program to the Governor, President of the Senate, and Speaker of the General Assembly on or before October 31 of each year. The report shall include information on the number of agreements entered into during the preceding fiscal year, a description of the project under each agreement, the number of jobs created, new income tax revenue received from withholdings, amounts awarded as grants and an update on the status of projects under agreement before the preceding fiscal year.

C.34:1B-139.1 Powers of authority relative to bonds.

9. Notwithstanding the provisions of any law, rule, regulation or order to the contrary:

a. The authority shall have the power, pursuant to the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by money received pursuant to this act for the purpose of (1) providing funds for the payment, in full or in part, of the grants provided to businesses under sections

1 through 14 of P.L.1996, c.26 (C.34:1B-124 through 34:1B-137); (2) providing funds to be used by the authority only for the purposes enumerated in subsections a. and b. of section 4 of P.L.1992, c.16 (C.34:1B-7.13) for payments to, or for the benefit of, designated industries that have the greatest potential to create eligible positions and promote State development strategies; and (3) and any costs related to the issuance of such bonds. The authority may establish reserve or other funds to further secure bonds and refunding bonds. The bonds shall be in the amount to yield proceeds to fund, all or in part, the payment of grants provided to business under this act, plus additional bonds to pay for the costs of issuance. Notwithstanding anything to the contrary, bonds issued for the purposes of paragraph (2) of this subsection, excluding refunding bonds, may only be issued upon certification by the authority at the time of issuance to the effect that payments for principal and interest on such bonds and any additional costs authorized by that paragraph (2) may not exceed an amount equivalent to the residual withholdings anticipated at the time of issuance of such bonds for the applicable fiscal years.

b. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds, pledge the contract with the State Treasurer, provided for in section 10 of P.L.2003, c.166 (C.34:1B-139.2), or any part thereof, for the payment or redemption of the bonds or refunding bonds, and covenant as to the use and disposition of money available to the authority for payments of bonds and refunding bonds. All costs associated with the issuance of bonds and refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to sections 10 and 11 of P.L.2003, c.166 (C.34:1B-139.2 and C.34:1B-139.3), which costs may include, but are not limited to, any costs and fees relating to the issuance of the bonds or refunding bonds, annual administrative costs and fees of the authority attributable to the payment of grants issued to businesses under this act, the fees and costs of bond counsel and any other professional fees and costs attributable to the agreements described in subsection c. of this section. The bonds or refunding bonds shall be authorized by resolution, which shall stipulate the manner of execution and form of the bonds, whether the bonds are in one or more series, the date or dates of issue, time or times of maturity, which shall not exceed 20 years, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates, and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, conversion or registration privileges, the sources and medium of payment and place or places of payment, terms of redemption, privileges of exchangeability or interchangeability, and entitlement to priorities of payment or security in the amounts to be received by the authority pursuant to sections 10 and 11 of P.L.2003, c.166 (C.34:1B-139.2 and C.34:1B-139.3).

The bonds may be sold at a public or private sale at a price or prices determined by the authority. The authority is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

c. In connection with any bonds or refunding bonds issued pursuant to this act, the authority may also enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements approved by the authority.

d. No resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this act shall be adopted or otherwise made effective without the approval in writing of the State Treasurer and the Joint Budget Oversight Committee. Except as provided by subsection i. of section 4 of P.L. 1974, c.80 (C.34:1B-4), bonds or refunding bonds may be issued without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by this subsection, and without any other proceedings or the occurrence of any other conditions or other things other than those proceedings, conditions or things which are specifically required by this act.

e. Bonds and refunding bonds issued by the authority pursuant to this act shall be special and limited obligations of the authority payable from, and secured by, such funds and moneys determined by the authority in accordance with this section. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to the provisions of this act shall not be a debt or liability of the State or any agency or instrumentality thereof, except as otherwise provided by this subsection, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

f. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of bond counsel, financial advisors and experts, placement agents, underwriters, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this act.

g. The proceeds from the sale of the bonds, other than refunding bonds, issued pursuant to this act, after payment of any costs related to the issuance of such bonds, shall be paid by the authority to be applied to the payment, in full or in part, for the purposes set forth in subsection a. of this section as directed by the State Treasurer.

h. All bonds or refunding bonds issued by the authority are deemed to be issued by a body corporate and politic of the State for an essential governmental purpose, and the interest thereon and the income derived from all funds, revenues, incomes and other moneys received for or to be received by the authority and pledged and available to pay or secure the payment on bonds or refunding bonds and the interest thereon, shall be exempt from all taxes levied pursuant to the provisions of Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, except for transfer inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

i. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to the provisions of this act, that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State Treasurer in any manner which would jeopardize the interest of the holders or any trustee of such holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of these bonds or refunding bonds or agreements made pursuant to subsection c. of this section except that the failure of the Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

j. Notwithstanding any restriction contained in any other law, rule, regulation or order to the contrary, the State and all political subdivisions of this State, their officers, boards, commissioners, departments or other agencies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking or investment business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any sinking funds, moneys or other funds, including capital, belonging to them or within their control, in any bonds or refunding bonds issued by the authority under the provisions of this act; and said bonds and refunding bonds are hereby made securities which may properly and legally be deposited with, and received by any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

C.34:1B-139.2 Contract payments to authority for debt service.

10. The State Treasurer shall, in each State fiscal year, pay from the General Fund to the authority, in accordance with a contract or contracts between the State Treasurer and the authority, authorized pursuant to section 11 of P.L.2003, c.166 (C.34:1B-139.3), an amount equivalent to the amount due to be paid in such State fiscal year to pay the debt service incurred for such State fiscal year on the bonds or refunding bonds of the authority issued pursuant to this act and any additional costs authorized by section 9 of P.L.2003, c.166 (C.34:1B-139.1). Notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such funds as shall be determined by the contract or contracts and further provided that the incurrence of any obligation of the State under the contract or contracts, including any payments to be made thereunder from the General Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

C.34:1B-139.3 Contracts between State Treasurer and authority authorized.

11. The State Treasurer and the authority are authorized to enter into one or more contracts to implement the payment arrangement that is provided for in section 10 of P.L.2003, c.166 (C.34:1B-139.2). The contract or contracts shall provide for payment by the State Treasurer of the amounts required to be paid pursuant to section 10 of P.L.2003, c.166 (C.34:1B-139.2) and shall set forth the procedure for the transfer of moneys for the purpose of paying such moneys. The contract or contracts shall contain such terms and conditions as are determined by the parties, and shall include, but not be limited to, terms and conditions necessary and desirable to secure any bonds or refunding bonds of the authority issued pursuant to this act; provided however, that notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such funds as shall be determined by the contract or contracts and further provided that the incurrence of any obligation of the State under the contract or contracts, including any payments to be made thereunder from the General Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

12. This act shall take effect immediately.

Approved September 2, 2003.

CHAPTER 167

AN ACT concerning any employees' retirement system established in a city of the first class having a population of less than 300,000 inhabitants and amending P.L.1987, c.171 and P.L.1990, c.20.

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

1. Section 1 of P.L.1987, c.171 (C.43:13-22.67) is amended to read as follows:

C.43:13-22.67 Loans from retirement system.

1. Any member who has at least three years of service credit for which contributions have been made as a member may borrow from the retirement system an amount equal to not more than 50% of the amount of the member's aggregate contributions, but not less than \$1,000.00; provided that the amount borrowed, together with interest, can be repaid by additional deductions from salary which do not exceed 25% of the member's salary at the time the loan is made. The amount so borrowed, together with interest at a rate fixed by the commission on any unpaid balance, shall be repaid to the retirement system in equal installments by deduction from salary or in another manner and in amounts which the commission shall approve; but the installments shall be at least equal to the member's contribution to the retirement system and at least sufficient to repay the amount borrowed with interest at the conclusion of a term fixed by the commission or by the time the member attains age 70. No more than two loans may be made to any member in any 12-month period.

Interest charged for loans to members shall be fixed annually by the commission to take effect January 1 of each calendar year at a rate equal to the average of the daily rates of interest at constant maturity based on daily trades paid by 30-year United States Treasury bonds for the period beginning on the first and ending on the 30th day of the immediately preceding November plus 1%, or 10%, whichever is less. The interest earned from loans to members shall be treated in the same manner as interest from investments of the retirement system.

2. Section 11 of P.L.1990, c.20 (C.43:13-22.73) is amended to read as follows:

C.43:13-22.73 Calculation of pension adjustment.

11. On or before October 1, 1996 and by the same date in each subsequent year, the Director of the Division of Pensions and Benefits of the Department of the Treasury shall review the index and determine the percentum of change in the index from the retirement year index pursuant to the provisions of the "Pension Adjustment Act," P.L.1958, c.143 (C.43:3B-1 et seq.). The percentage of adjustment in the retirement allowances, pensions and survivorship benefits shall equal the percentum of change in the index. Any adjustment so calculated shall apply to all of the months of the following calendar year for eligible retirants and beneficiaries, except that for those qualifying for the first time,

it shall apply only to those months of the following calendar year in which the retiree or beneficiary is eligible to receive the adjustment.

On the basis of information certified to the director by the retirement system concerning the amounts of all retirement allowances, pensions and survivorship benefits of eligible retirees and beneficiaries which are subject to adjustment under sections 7 through 13 of P.L. 1990, c.20 (C.43:13-22.69 through 22.75), and any other relevant matters as the director may require, the director shall certify to the retirement system the amounts required to fund the benefits provided under those sections for the applicable year. The director shall include in that certification amounts sufficient to adjust the retirement allowances, pensions or survivorship benefits payable to all eligible retirees and beneficiaries by the percentum of change in the index as such retirement allowances or pensions may have been originally granted, or increased for certain retirees and beneficiaries in accordance with the provisions of the "Pension Adjustment Act."

In no instance shall the amount of the retirement allowance, pension or survivorship benefit originally granted and payable to any retiree or beneficiary be reduced as a result of this adjustment.

3. This act shall take effect immediately.

Approved September 3, 2003.

CHAPTER 168

AN ACT concerning firearms, and amending N.J.S.2C:39-3 and N.J.S.2C:39-6.

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

1. N.J.S.2C:39-3 is amended to read as follows:

Prohibited weapons and devices.

2C:39-3. Prohibited Weapons and Devices.

a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.

c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.

d. Defaced firearms. Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.

e. Certain weapons. Any person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife, without any explainable lawful purpose, is guilty of a crime of the fourth degree.

f. Dum-dum or body armor penetrating bullets. (1) Any person, other than a law enforcement officer or persons engaged in activities pursuant to subsection f. of N.J.S.2C:39-6, who knowingly has in his possession any hollow nose or dum-dum bullet, or (2) any person, other than a collector of firearms or ammunition as curios or relics as defined in Title 18, United States Code, section 921 (a) (13) and has in his possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco and Firearms, who knowingly has in his possession any body armor breaching or penetrating ammunition, which means: (a) ammunition primarily designed for use in a handgun, and (b) which is comprised of a bullet whose core or jacket, if the jacket is thicker than .025 of an inch, is made of tungsten carbide, or hard bronze, or other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale, and (c) is therefore capable of breaching or penetrating body armor, is guilty of a crime of the fourth degree. For purposes of this section, a collector may possess not more than three examples of each distinctive variation of the ammunition described above. A distinctive variation includes a different head stamp, composition, design, or color.

g. Exceptions. (1) Nothing in subsection a., b., c., d., e., f., j. or k. of this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders. Nothing in subsection h. of this section shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General. Nothing in this section shall apply to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2) a. Nothing in subsection f. (1) shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land, nor shall subsection f. (1) be construed to prevent any licensed retail or wholesale firearms dealer from possessing such

ammunition at its licensed premises, provided that the seller of any such ammunition shall maintain a record of the name, age and place of residence of any purchaser who is not a licensed dealer, together with the date of sale and quantity of ammunition sold.

b. Nothing in subsection f.(1) shall be construed to prevent a designated employee or designated licensed agent for a nuclear power plant under the license of the Nuclear Regulatory Commission from possessing hollow nose ammunition while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties.

(3) Nothing in paragraph (2) of subsection f. or in subsection j. shall be construed to prevent any licensed retail or wholesale firearms dealer from possessing that ammunition or large capacity ammunition magazine at its licensed premises for sale or disposition to another licensed dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to a law enforcement agency. The record shall include the name of the purchasing agency, together with written authorization of the chief of police or highest ranking official of the agency, the name and rank of the purchasing law enforcement officer, if applicable, and the date, time and amount of ammunition sold or otherwise disposed. A copy of this record shall be forwarded by the seller to the Superintendent of the Division of State Police within 48 hours of the sale or disposition.

(4) Nothing in subsection a. of this section shall be construed to apply to antique cannons as exempted in subsection d. of N.J.S.2C:39-6.

(5) Nothing in subsection c. of this section shall be construed to apply to any person who is specifically identified in a special deer management permit issued by the Division of Fish and Wildlife to utilize a firearm silencer as part of an alternative deer control method implemented in accordance with a special deer management permit issued pursuant to section 4 of P.L.2000, c.46 (C.23:4-42.6), while the person is in the actual performance of the permitted alternative deer control method and while going to and from the place where the permitted alternative deer control method is being utilized. This exception shall not, however, otherwise apply to any person to authorize the purchase or possession of a firearm silencer.

h. Stun guns. Any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree.

i. Nothing in subsection e. of this section shall be construed to prevent any guard in the employ of a private security company, who is licensed to carry a firearm, from the possession of a nightstick when in the actual

performance of his official duties, provided that he has satisfactorily completed a training course approved by the Police Training Commission in the use of a nightstick.

j. Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree unless the person has registered an assault firearm pursuant to section 11 of P.L. 1990, c.32 (C.2C:58-12) and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army.

k. Handcuffs. Any person who knowingly has in his possession handcuffs as defined in P.L. 1991, c.437 (C.2C:39-9.2), under circumstances not manifestly appropriate for such lawful uses as handcuffs may have, is guilty of a disorderly persons offense. A law enforcement officer shall confiscate handcuffs possessed in violation of the law.

2. N.J.S.2C:39-6 is amended to read as follows:

Exemptions.

2C:39-6. a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park ranger, or State conservation officer;

(5) A prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a correction officer or keeper of a penal institution in this State at all times

while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;

(7) (a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c.439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection (b) of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons;

(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c.409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, such a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(9) A juvenile corrections officer in the employment of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) subject to the regulations promulgated by the commission;

(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately

trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which he may be required to carry, while in the actual performance of his official duties and while going to or from his place of duty, or any other police officer, while in the actual performance of his official duties;

(2) A State deputy conservation officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of his official duties;

(3) (Deleted by amendment, P.L.1986, c.150.)

(4) A court attendant serving as such under appointment by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of his official duties;

(5) A guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of his official duties;

(6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;

(7) An officer of the Society for the Prevention of Cruelty to Animals, while in the actual performance of his duties;

(8) An employee of a public utilities corporation actually engaged in the transportation of explosives;

(9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that he has passed an approved police academy training program consisting of at least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;

(10) A campus police officer appointed under P.L.1970, c.211 (C.18A:6-4.2 et seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(11) (Deleted by amendment, P.L.2003, c.168).

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c.291 (C.27:25-15.1);

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c.210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c.362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law

enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being

transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and Senior Services and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health and Senior Services.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified

in paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

l. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including a retirement because of a disability pursuant to section 6 of P.L.1944, c.255 (C.43:16A-6), section 7 of P.L.1944, c.255 (C.43:16A-7), section 1 of P.L.1989, c.103 (C.43:16A-6.1) or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of five or more years prior to his disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of his usual law enforcement duties and any other available duty in the department which his employer was willing to assign to him or does not subject that retired officer to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun he is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is less than 70 years of age, and who was regularly employed as a full-time member of the State Police; a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State; a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's officer of a county of this State; a full-time State or county corrections officer; a full-time county park police officer; a full-time county prosecutor's detective or investigator; or a full-time federal law enforcement officer from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section under the conditions provided herein:

(1) The retired law enforcement officer, within six months after retirement, shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.

(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was

last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:

- (a) The name and address of the retired officer;
- (b) The date that the retired officer was hired and the date that the officer retired;
- (c) A list of all handguns known to be registered to that officer;
- (d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and
- (e) A statement that the officer retired in good standing.

(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.

(4) The superintendent shall issue to an approved retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for one year from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.

(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request a hearing in the Superior Court of New Jersey in the county in which he resides by filing a written request for such a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of such a hearing shall be in accordance with law and the rules governing the courts of this State.

(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, his identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein he resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth in this subsection.

m. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using any device that projects, releases or emits any substance specified as being non-injurious to wildlife by the Director of the Division of Animal Health in the Department of Agriculture, and which may immobilize wildlife and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the purpose of repelling bear or other animal attacks or for the aversive conditioning of wildlife.

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.

3. This act shall take effect immediately.

Approved September 3, 2003.

CHAPTER 169

AN ACT concerning privately-owned sanitary landfill facilities, and revising various sections of statutory law.

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

C.48:13A-7.24 Short title.

1. Sections 1 through 10 of P.L.2003, c.169 (C.48:13A-7.24 et seq.) shall be known and may be cited as the "Commercial Landfill Regulatory Reform Act."

C.48:13A-7.25 Findings, declarations relative to solid waste disposal services.

2. The Legislature finds and declares that efficient and reasonable solid waste disposal services at competitive rates will more likely be achieved if the services of privately-owned sanitary landfill facilities in this State are under the supervision of the Department of Environmental Protection but not subject to traditional public utility economic regulation.

The Legislature further finds and declares that it is imperative that the State ensure the economic viability and competitiveness of all solid waste disposal facilities in this State whether publicly or privately owned in order to safeguard the integrity of the State's solid waste management strategy; that it is equally imperative to safeguard the interests of consumers in efficient sanitary landfill services at competitive rates; that to achieve these ends and provide for consumer protection it is necessary to foster competition and this can best be achieved by establishing a responsible State supervisory role and abolishing traditional utility economic restrictions which place New Jersey's commercial landfills at a competitive disadvantage and threaten their economic viability in today's competitive market for solid waste disposal services.

The Legislature further finds and declares that reforming traditional public utility regulation with respect to privately-owned sanitary landfill facilities in the manner hereinafter provided will not compromise the State's ability to supervise the solid waste disposal services provided at such commercial facilities pursuant to P.L. 1970, c.40 (C.48:13A-1 et seq.) or its ability to prevent persons with criminal backgrounds from engaging in the business of solid waste disposal through implementation of the licensing system established under P.L. 1983, c.392 (C.13:1E-126 et seq.) and P.L. 1991, c.269 (C.13:1E-128.1 et al.).

The Legislature therefore determines that it is in the public interest to provide for the reform of this State's economic regulation of privately-owned sanitary landfill facilities while at the same time maintaining State supervision over these commercial facilities.

C.48:13A-7.26 Definitions relative to solid waste disposal services.

3. As used in sections 1 through 10 of P.L.2003, c.169 (C.48:13A-7.24 et seq.):

"Department" means the Department of Environmental Protection.

"Market-based rates" means the solid waste disposal rates collected by a privately-owned sanitary landfill facility which do not exceed rates charged at other solid waste facilities in this State or at competing out-of-State facilities.

"Privately-owned sanitary landfill facility" means a commercial sanitary landfill facility which is owned and operated by a private person, corporation or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing or disposal of solid waste.

"Sanitary landfill facility" means a solid waste facility at which solid waste is deposited on or in the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste.

"Solid waste disposal services" means the services provided by persons engaging in the business of solid waste disposal.

C.48:13A-7.27 Certificate of public convenience and necessity required for operation.

4. a. The owner or operator of every privately-owned sanitary landfill facility shall hold a certificate of public convenience and necessity issued by the department pursuant to the provisions of section 7 of P.L.1970, c.40 (C.48:13A-6).

b. The terms and conditions of solid waste disposal services at a privately-owned sanitary landfill facility shall be set forth in a tariff filed with the department.

c. Within ten days of any deletion or addition of a service, a tariff amendment shall be filed with the department.

C.48:13A-7.28 Adjustment of rates.

5. a. The solid waste disposal rates collected by a privately-owned sanitary landfill facility may be adjusted upon 30 days' notice to current customers and publication in a newspaper of general circulation in the service area once a week for two consecutive weeks, with the first notice being 30 days in advance of the effective date of the adjustments, and following their effective date the rates shall be posted in a prominent location at the entrance to the privately-owned sanitary landfill facility.

b. The notice of solid waste disposal rate adjustments shall be filed with the department within three days of their effective date.

C.48:13A-7.29 Annual fee.

6. a. The total annual fee collected by the department from the owner or operator of a privately-owned sanitary landfill facility to cover the costs of supervising the privately-owned sanitary landfill facility pursuant to the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) shall not exceed the annual assessment authorized under the provisions of P.L.1968, c.173 (C.48:2-59 et seq.).

b. For the purposes of the annual assessment authorized under the provisions of P.L.1968, c.173 (C.48:2-59 et seq.), the owner or operator of a privately-owned sanitary landfill facility shall file with the department not later than May 1 of each year a certification of gross operating revenues received from intrastate utility services during the preceding calendar year.

C.48:13A-7.30 Solid waste disposal rates deemed just and reasonable.

7. a. Notwithstanding the provisions of any other law, rule or regulation, court decision or order of the Board of Public Utilities or department to the contrary, the solid waste disposal rates collected by a privately-owned sanitary landfill facility shall be deemed just and reasonable for the purposes of section 8 of P.L.1970, c.40 (C.48:13A-7) if those rates are market-based rates.

b. The solid waste disposal rates collected by a privately-owned sanitary landfill facility which exceed the market-based rates authorized pursuant to subsection a. of this section shall not be deemed unjust and unreasonable if the solid waste disposal rates are designed to: (1) stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity; or (2) recover sufficient revenues to meet the revenue requirements of the privately-owned sanitary landfill facility.

c. The internal cost of service or financial condition of a privately-owned sanitary landfill facility shall be deemed relevant only if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the department pursuant to section 8 of P.L.2003, c.169 (C.48:13A-7.31). In such a case, the owner or operator of the privately-owned sanitary landfill facility, at the owner's sole discretion, may establish a reasonable profit margin using either the return on rate base or operating margin methodology, or any alternative methodology which is consistent with market practices.

C.48:13A-7.31 Contested case proceedings.

8. a. Whenever, on the basis of available information, the department has reasonable grounds for belief that the solid waste disposal rates collected by a privately-owned sanitary landfill facility are not in compliance with the market-based rates authorized in subsection a. of section 7 of P.L.2003, c.169 (C.48:13A-7.30), the department may initiate contested case proceedings before the Office of Administrative Law as authorized herein.

b. At least 30 days prior to transmittal of the contested case to the Office of Administrative Law pursuant to subsection a. of this section, the department shall serve a notice on the owner or operator of the affected facility. The notice shall identify the solid waste disposal rate or rates at issue, describe and attach copies of the evidence relied upon, and afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted.

c. Within 30 days of the close of the hearing before the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the department order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill facility to bring the rates into compliance with the market-based rates authorized in subsection a. of section 7 of P.L.2003,

c.169 (C.48:13A-7.30), if the department shows that the solid waste disposal rates identified in the notice of transmittal: (1) are not in compliance with the market-based rates authorized in subsection a. of section 7 of P.L.2003, c.169 (C.48:13A-7.30) and the owner or operator of the affected facility has not demonstrated that the rates; (2) are designed to stabilize incoming waste flows; or (3) are needed to meet the revenue requirements of the privately-owned sanitary landfill facility.

d. The administrative law judge's initial decision shall be simultaneously served on the department and the owner or operator of the affected facility. Within 30 days of receipt of the initial decision, the department shall issue a final order affirming or rejecting the recommendations of the administrative law judge and describing with specificity the basis in the record for any findings or conclusions which are contrary to those set forth in the initial decision.

e. If the department fails to act on the initial decision within 90 days of its receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge shall be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the department thereafter shall be of no effect.

f. Except to the extent expressly modified herein, the contested case proceeding authorized pursuant to this section shall be conducted in accordance with the rules and regulations applicable to such proceedings promulgated by the Office of Administrative Law, including rules applicable to summary judgment motions.

C.48:13A-7.32 Jurisdiction of department.

9. a. The provisions of section 18 of P.L.1975, c.326 (C.13:1E-27), Title 48 of the Revised Statutes, P.L.1970, c.40 (C.48:13A-1 et seq.), or any other law, rule or regulation adopted pursuant thereto, or order issued by the Board of Public Utilities or the department, to the contrary notwithstanding, the jurisdiction of the department with respect to the State supervision of privately-owned sanitary landfill facilities shall be exercised with respect to the solid waste disposal rates collected by privately-owned sanitary landfill facilities solely in the manner and to the extent expressly provided in the provisions of P.L.2003, c.169 (C.48:13A-7.24 et al.), and shall not extend to the financial or business affairs of any privately-owned sanitary landfill facility or the owner or operator thereof, except to the extent expressly provided in the provisions of R.S.48:3-7 and section 12 of P.L.1970, c.40 (C.48:13A-11).

b. Nothing contained in the provisions of P.L.2003, c.169 (C.48:13A-7.24 et al.) shall be construed to limit the authority of the department to regulate privately-owned sanitary landfill facilities with respect to the provision of solid waste disposal services pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.),

environmental standards and requirements pursuant to P.L. 1970, c.39 (C.13:1E-1 et seq.) and licensing standards and requirements pursuant to P.L. 1983, c.392 (C.13:1E-126 et seq.) and P.L. 1991, c.269 (C.13:1E-128.1 et al.).

C.48:13A-7.33 Rules, regulations by department for regulatory reform.

10. Within 180 days of the effective date of P.L.2003, c.169 (C.48:13A-7.24 et al.), the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as are necessary to effectuate the provisions of this act and to implement the regulatory reforms enacted herein.

11. Section 5 of P.L.1970, c.40 (C.48:13A-4) is amended to read as follows:

C.48:13A-4 Rules, regulations for utility aspects.

5. a. The Department of Environmental Protection shall, after hearing, by order in writing, adopt appropriate rules, regulations or administrative orders for the regulation of rates and public utility aspects of the solid waste disposal industry.

b. The Department of Environmental Protection shall, after hearing, by order in writing, adopt appropriate rules, regulations or administrative orders for the supervision of the solid waste collection industry.

c. (Deleted by amendment, P.L.,2003, c.169).

12. Section 6 of P.L.1970, c.40 (C.48:13A-5) is amended to read as follows:

C.48:13A-5 Award of franchises.

6. a. The Department of Environmental Protection may, by order in writing, when it finds that the public interest requires, award a franchise to any person or persons engaged in solid waste disposal at rates published in tariffs or contracts accepted or to be accepted for filing by the Department of Environmental Protection.

After November 10, 1997, the Department of Environmental Protection shall not award a franchise to any person or persons engaged in solid waste disposal in this State.

b. (Deleted by amendment, P.L.2003, c.169).

c. For the purposes of this section, "franchise" shall mean the exclusive right to control and provide for the disposal of solid waste, except for recyclable material whenever markets for those materials are available, within a district as awarded by the Board of Public Utilities or the department prior to November 10, 1997.

d. In no event shall the department award a franchise to any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or the licensee

as defined in section 2 of P.L.1983, c.392 (C.13:1E-127), if the department determines that there is a reasonable suspicion to believe that the person does not possess a reputation for good character, honesty and integrity, and that person or the applicant, permittee or licensee fails, by clear and convincing evidence, to establish his reputation for good character, honesty and integrity.

e. Nothing in section 11 of P.L.1970, c.40 (C.48:13A-10) shall be interpreted to prevent the implementation of this section by the Department of Environmental Protection.

13. Section 7 of P.L.1970, c.40 (C.48:13A-6) is amended to read as follows:

C.48:13A-6 Qualifications.

7. a. No person shall engage, or be permitted to engage, in the business of solid waste collection or solid waste disposal until found by the Department of Environmental Protection to be qualified by experience, training or education to engage in such business, is able to furnish proof of financial responsibility, and unless that person holds a certificate of public convenience and necessity issued by the Department of Environmental Protection.

(1) No certificate shall be issued for solid waste collection or solid waste disposal until the person proposing to engage in solid waste collection or solid waste disposal, as the case may be, has been registered with and approved by the Department of Environmental Protection as provided by section 5 of P.L.1970, c.39 (C.13:1E-5).

(2) No certificate of public convenience and necessity shall be issued by the Department of Environmental Protection to any person who has been denied approval of a license under the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), or whose license has been revoked by the Department of Environmental Protection, as the case may be.

b. No person shall transport regulated medical waste until found by the Department of Environmental Protection to be qualified by experience, training or education to engage in such business, and is able to furnish proof of financial responsibility, and holds a certificate of public convenience and necessity issued by the Department of Environmental Protection. No certificate shall be issued for the transportation of regulated medical waste until the proposed transporter has obtained a registration statement required by section 5 of P.L.1970, c.39 (C.13:1E-5) and paid the fee imposed under section 9 of P.L.1989, c.34 (C.13:1E-48.9).

c. Notwithstanding the provisions of subsection b. of this section, the department shall not have jurisdiction over rates or charges for the transportation of regulated medical waste.

14. Section 1 of P.L.1981, c.221 (C.48:13A-6.1) is amended to read as follows:

C.48:13A-6.1 Sanitary landfill facility; operation after filing of and under conditions in tariff.

1. a. Notwithstanding the provision of any other law, rule or regulation to the contrary, no sanitary landfill facility shall commence or continue operation unless a solid waste disposal tariff therefor has been filed and approved by the Department of Environmental Protection pursuant to the "Solid Waste Utility Control Act," P.L.1970, c.40 (C.48:13A-1 et seq.). No sanitary landfill facility shall operate under any conditions contrary to those specifically set forth in its approved solid waste disposal tariff.

The provisions of this subsection shall not apply to sanitary landfill facilities operated by a public authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.).

b. The provisions of subsection a. of this section shall not apply to a privately-owned sanitary landfill facility, except as provided in sections 1 through 10 of P.L.2003, c.169 (C.48:13A-7.24 et seq.). As used in this subsection, "privately-owned sanitary landfill facility" means a commercial sanitary landfill facility which is owned and operated by a private person, corporation or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing or disposal of solid waste.

15. Section 8 of P.L.1970, c.40 (C.48:13A-7) is amended to read as follows:

C.48:13A-7 Proof of reasonable rates; adjustments.

8. a. The Department of Environmental Protection, upon complaint or its own initiative, after hearing, may direct any person engaging in the solid waste disposal business to furnish proof that the rates charged for solid waste disposal services do not exceed just and reasonable rates for such service.

b. Should the department find that the rates charged for solid waste disposal services are excessive, then the department may order the person charging such excessive rates to make an adjustment in the tariff or contract to a sum which shall result in just and reasonable rates.

16. Section 9 of P.L.1970, c.40 (C.48:13A-8) is amended to read as follows:

C.48:13A-8 Failure to perform; department orders.

9. a. Should any person engaged in the solid waste disposal business fail or refuse to complete, execute or perform any contract or agreement obligating that person to provide solid waste disposal services, the Department of Environmental Protection may order any person engaged in the solid waste disposal business to extend solid waste disposal services into any area where

service has been discontinued in accordance with the provisions of R.S.48:2-27, and the department shall:

- (1) fix an appropriate initial rate for solid waste collection service; or
- (2) fix and exercise continuing jurisdiction over just and reasonable rates for solid waste disposal service in the extended area.

b. Should any person engaged in the solid waste collection business refuse to furnish solid waste collection services within a municipality pursuant to section 2 of P.L.1991, c.170 (C.40:66-5.2), the department may order the solid waste collector to provide these services in accordance with the provisions of R.S.48:2-23.

17. R.S.48:3-7 is amended to read as follows:

Utility property transactions.

48:3-7. a. No public utility shall, without the approval of the board, sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other public utility.

Where, by the proposed sale, lease or other disposition of all or a substantial portion of its property, any franchise or franchises, privileges or rights, or any part thereof or merger or consolidation thereof as set forth herein, it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligation to any employees thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the board shall not grant its approval unless the public utility seeking the board's approval for such sale, lease or other disposition assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due.

Every sale, mortgage, lease, disposition, encumbrance, merger or consolidation made in violation of this section shall be void.

Nothing herein shall prevent the sale, lease or other disposition by any public utility of any of its property in the ordinary course of business, nor require the approval of the board to any grant, conveyance or release of any property or interest therein heretofore made or hereafter to be made by any public utility to the United States, State or any county or municipality or any agency, authority or subdivision thereof, for public use.

The approval of the board shall not be required to validate the title of the United States, State or any county or municipality or any agency, authority or subdivision thereof, to any lands or interest therein heretofore condemned or hereafter to be condemned by the United States, State or any county or municipality or any agency, authority or subdivision thereof for public use.

b. Notwithstanding any law, rule, regulation or order to the contrary, an autobus public utility regulated by and subject to the provisions of Title 48 of the Revised Statutes may, without the approval of the Department of Transportation, sell, lease, mortgage or otherwise dispose of or encumber its property, or any part thereof, except that approval of the Department of Transportation shall be required for the following:

- (1) the sale of 60% or more of its property within a 12-month period;
- (2) a merger or consolidation of its property, franchises, privileges or rights; or
- (3) the sale of any of its franchises, privileges or rights.

Notice of the sale, purchase or lease of any autobus or other vehicle subject to regulation under Title 48 of the Revised Statutes shall be provided to the Department of Transportation as the department shall require.

c. Except as otherwise provided in subsection e. of this section, no solid waste collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3) shall, without the approval of the Department of Environmental Protection:

- (1) sell, lease, mortgage or otherwise dispose of or encumber its property, including customer lists; or
- (2) merge or consolidate its property, including customer lists, with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

d. Any solid waste collector seeking approval for any transaction enumerated in subsection c. of this section shall file with the department, on forms and in a manner prescribed by the department, a notice of intent at least 30 days prior to the completion of the transaction.

(1) The department shall promptly review all notices filed pursuant to this subsection. The department may, within 30 days of receipt of a notice of intent, request that the solid waste collector submit additional information to assist in its review if it deems that such information is necessary. If no such request is made, the transaction shall be deemed to have been approved. In the event that additional information is requested, the department shall outline, in writing, why it deems such information necessary to make an informed decision on the impact of the transaction on effective competition.

(2) The department shall approve or deny a transaction within 60 days of receipt of all requested information. In the event that the department fails to take action on a transaction within the 60-day period specified herein, then the transaction shall be deemed to have been approved.

(3) The department shall approve a transaction unless it makes a determination pursuant to the provisions of section 19 of P.L.1991, c.381

(C.48:13A-7.19) that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition.

The department shall prescribe and provide upon request all necessary forms for the implementation of the notification requirements of this subsection.

e. (1) Any solid waste collector may, without the approval of the department, purchase, finance or lease any equipment, including collection or haulage vehicles.

(2) Any solid waste collector may, without the approval of the department, sell or otherwise dispose of its collection or haulage vehicles; except that no solid waste collector shall, without the approval of the department in the manner provided in subsection d. of this section, sell or dispose of 33% or more of its collection or haulage vehicles within a 12-month period.

f. (1) The owner or operator of a privately-owned sanitary landfill facility may, without the approval of the Department of Environmental Protection, sell or otherwise dispose of its assets except that the prior approval of the department shall be required (a) to sell all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator; (b) to sell a controlling ownership interest in the sanitary landfill facility; or (c) to merge or consolidate its property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal pursuant to the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act.

(2) Any owner or operator seeking approval for any transaction enumerated in this subsection shall file with the department an application therefor, on forms and in a manner prescribed by the department. The department shall promptly review all applications filed pursuant to this subsection and shall serve requests for information regarding any transaction within 30 days following the filing of an application if the department deems that such information is necessary. The department shall approve or deny the transaction within 60 days of receipt of all requested information. In the event that the department fails to take action on a transaction within the 60-day period specified herein, then the transaction shall be deemed to have been approved.

As used in this section, "business concern" means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization; and "privately-owned sanitary landfill facility" means a commercial sanitary landfill facility which is owned and operated by a private person, corporation or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing or disposal of solid waste.

18. R.S.48:3-9 is amended to read as follows:

Security transactions.

48:3-9. No public utility shall, unless it shall have first obtained authority from the board so to do:

(a) Issue any stocks, or any bonds, notes or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note or any other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or

(b) Permit any demand note to remain unpaid for a period of more than 12 months after the date thereof.

The board shall approve any such proposed issue, with or without hearing at its discretion, when satisfied that such issue is to be made in accordance with law and the purpose thereof is approved by the board.

The provisions of this section shall not apply to any public utility operating, managing or controlling a railroad or a railway express which is subject to the rules and regulations from time to time issued by the Interstate Commerce Commission.

The provisions of this section shall not apply to autobus public utilities under the jurisdiction of the Department of Transportation.

The provisions of this section shall not apply to any solid waste collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3).

The provisions of this section shall not apply to any privately-owned sanitary landfill facility as defined in section 3 of P.L.2003, c.169 (C.48:13A-7.26).

19. Section 10 of P.L.1970, c.40 (C.48:13A-9) is amended to read as follows:

C.48:13A-9 Revocation or suspension of certificate of public convenience and necessity.

10. The Department of Environmental Protection shall revoke or suspend the certificate of public convenience and necessity issued to any person engaged in the solid waste collection business or the solid waste disposal business upon the finding that such person:

a. Has violated any provision of P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L.1991, c.381 (C.48:13A-7.1 et al.), or any rule, regulation or administrative order adopted or issued pursuant thereto; or

b. Has violated any provision of any laws related to pollution of the air, water or lands of this State; or

c. Has refused or failed to comply with any lawful order of the department;

or

- d. Has had its registration revoked by the Department of Environmental Protection; or
- e. Has been denied approval of a license under the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license revoked by the Department of Environmental Protection, as the case may be.

20. Section 12 of P.L.1970, c.40 (C.48:13A-11) is amended to read as follows:

C.48:13A-11 Attendance of witnesses; production of tariffs, accounts and documents.

12. a. The Department of Environmental Protection may compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all the documents necessary to enable the department to administer its duties as prescribed by law and the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.).

b. The department may compel any person engaged in the business of solid waste disposal or otherwise providing solid waste disposal services in this State to furnish and file with the department any annual reports, federal or State tax returns, contracts, papers, books, accounts, customer lists, financial or operational information, or contracts, books, accounts and records of affiliated business concerns, including any affiliated or parent corporation or organization, or any wholly or partially owned subsidiary thereof, directly or indirectly involved therewith, or having a direct or indirect financial interest in the solid waste disposal services provided by that person, and all financial transactions between these parties related to the solid waste disposal services provided by that person, or other documents as may be necessary to enable the department to administer its duties as prescribed by law and the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.).

c. Should any person engaged in the business of solid waste disposal or otherwise providing solid waste disposal services fail or refuse to comply with any provision of this section, or any applicable provision of Title 48 of the Revised Statutes, the department may revoke or suspend the certificate of public convenience and necessity issued to that person.

d. The provisions of this section shall apply to a privately-owned sanitary landfill facility as defined in section 3 of P.L.2003, c.169 (C.48:13A-7.26) only if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the department pursuant to section 8 of P.L.2003, c.169 (C.48:13A-7.31).

21. Section 16 of P.L.1991, c.381 (C.48:13A-7.16) is amended to read as follows:

C.48:13A-7.16 Provision of annual report; failure to comply.

16. a. The Department of Environmental Protection may compel any person engaged in the business of solid waste collection or otherwise providing solid waste collection services to furnish and file with the department a consolidated annual report or other documents as may be necessary to enable the department to administer its duties as prescribed by law and the provisions of P.L. 1991, c.381 (C.48:13A-7.1 et al.).

b. Should any person engaged in the business of solid waste collection or otherwise providing solid waste collection services fail or refuse to comply with any provision of this section, the department may revoke or suspend the certificate of public convenience and necessity issued to that person.

22. Section 17 of P.L. 1991, c.381 (C.48:13A-7.17) is amended to read as follows:

C.48:13A-7.17 Provision of records and other documents; failure to comply.

17. a. The Department of Environmental Protection may compel any solid waste collector to furnish and file with the department any records, including, but not limited to, manifests, origin and destination forms, customer lists, financial or operational information, contracts, books, accounts and records of affiliated business concerns, including any affiliated or parent corporation or organization, or any wholly or partially owned subsidiary thereof, directly or indirectly involved therewith, or having a direct or indirect financial interest in the solid waste collection services provided by the solid waste collector, and all financial transactions between these parties related to the solid waste collection services provided by the solid waste collector, and any other documents related to solid waste collection or solid waste disposal activities, at any time or place in order to determine compliance with the provisions of P.L. 1991, c.381 (C.48:13A-7.1 et al.) or P.L. 1970, c.40 (C.48:13A-1 et seq.) or any rule, regulation or administrative order adopted or issued pursuant thereto, and to enable the department to administer its duties as prescribed by law and the provisions of P.L. 1991, c.381 (C.48:13A-7.1 et al.).

b. Should any solid waste collector fail or refuse to comply with any provision of this section, the department may revoke or suspend the certificate of public convenience and necessity issued to that person.

23. This act shall take effect on January 1, 2004.

Approved September 3, 2003.

CHAPTER 170

AN ACT concerning motor vehicles and supplementing chapter 40 of Title 2C of the New Jersey Statutes.

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

C.2C:40-23 Production, delivery of ignition key, documentation required.

1. a. No person shall produce and deliver an ignition key or other device designed to operate a lock or locks on a motor vehicle or start a motor vehicle to any person on the basis of a motor vehicle identification number without obtaining and making a record of:

(1) proof that the person requesting the ignition key or other device is the owner or lessee of the vehicle, or is a member of the same household as the owner or lessee of the vehicle, and which, at a minimum, shall include one of the following: a valid motor vehicle registration certificate, a valid insurance identification card, a valid insurance policy or a certificate of ownership; and

(2) identification of the person requesting the ignition key or other device, which identification shall include a photograph of the person.

b. The records made pursuant to the requirements of subsection a. of this section shall be retained for five years.

c. Nothing in this act shall be construed to deny a lessor or lienholder lawful access to a motor vehicle.

d. A person who violates any provision of this act shall be guilty of a disorderly persons offense, except that notwithstanding the provisions of subsection c. of N.J.S.2C:43-3, a fine of not more than \$2,000 may be imposed.

2. This act shall take effect immediately.

Approved September 3, 2003.

CHAPTER 171

AN ACT providing for the licensure of certain crane operators and supplementing Title 45 of the Revised Statutes.

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

C.45:26-1 Short title.

1. This act shall be known and may be cited as the "Licensing of Crane Operators Act."

C.45:26-2 Definitions relative to crane operators.

2. As used in this act:

"Board" means the Crane Operators License Advisory Board established pursuant to section 3 of this act.

"Certification" means certification from the National Commission for the Certification of Crane Operators or any other organization found by the board to offer an equivalent testing and certification program meeting the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies.

"Commissioner" means the Commissioner of Labor.

"Crane" means a power-operated hoisting machine used in construction, demolition or excavation work that has a power-operated winch, load line and boom moving laterally by the rotation of the machine on a carrier and has a manufacturer-rated lifting capacity of ten tons or more. It shall not include a forklift, digger derrick truck, aircraft, bucket truck, knuckle boom, trolley boom or any vehicle or machine not having a power-operated winch and load line.

"Crane operator" means an individual engaged in the operation of a crane.

"Crane related experience" means operating, inspecting, training and maintenance experience acceptable to the board.

"Practical examination" means an examination demonstrating the applicant's ability to safely operate a particular category or type of crane. Practical examinations shall be conducted for the following crane categories: the lattice boom crawler or truck cranes, telescopic boom cranes having a capacity of less than 17.5 tons, and the telescopic boom cranes having a capacity of more than 17.5 tons.

C.45:26-3 Crane Operators License Advisory Board.

3. a. There is created within the Department of Labor, a Crane Operators License Advisory Board. The board shall consist of seven members who are residents of the State, consisting of the commissioner or his designee, as the chairperson, serving ex-officio and representing the Department of Labor, a heavy highway, utility or transportation construction contractor representative, a building contractor representative and four licensed crane operators who have been actively engaged in crane related operations in this State for at least five years immediately preceding their appointment.

b. For a period of one year after the effective date of this act, and notwithstanding any other provisions of this act to the contrary, the first four crane operators appointed as members of the board shall not be required, at the time of their first appointment, to be licensed under the provisions of this act as crane operators.

c. The Governor shall appoint each board member for a term of three years, except that of the members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and two shall serve for terms of one year. Each member shall hold office until his successor has been qualified. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided for the original appointment. No member of the board may serve more than two successive terms, in addition to any unexpired term to which he has been appointed.

C.45:26-4 Reimbursement, facilities, personnel of board.

4. Members of the board shall be reimbursed for expenses and provided with office and meeting facilities and personnel required for the proper conduct of the board's business.

C.45:26-5 Meetings of board, elections, appointments.

5. The board shall annually elect from among its members a vice-chairperson and may appoint a secretary, who need not be a member of the board. The board shall meet at least twice a year and may hold additional meetings as necessary to discharge its duties.

C.45:26-6 Powers, duties of commissioner.

6. The commissioner shall have the following powers and duties:
- a. Administer and enforce the provisions of this act;
 - b. Issue and renew licenses to crane operators pursuant to the provisions of this act;
 - c. Suspend, revoke or fail to renew the license of a crane operator pursuant to the provisions of P.L. 1978, c. 73 (C.45:1-14 et seq.);
 - d. Adopt standards for certification that are consistent with applicable certification requirements of one or more established and nationally recognized crane operator certification programs recognized by the federal Occupational Safety and Health Administration;
 - e. Adopt and publish a code of ethics and standards of practice for licensed crane operators;
 - f. Prescribe and charge reasonable fees to support program costs associated with examinations, licenses, renewals and other services performed pursuant to this act;
 - g. Create any subcommittee the commissioner deems necessary to assist in the performance of his duties; and

h. Implement a schedule establishing penalties for violations of this act or any regulations hereunder.

C.45:26-7 Licensure of crane operators.

7. a. No person shall engage in the operation of a crane, offer himself for employment as a crane operator or otherwise act, attempt to act, present or represent himself as a crane operator unless licensed as such under the provisions of this act.

b. A crane operator's license shall be valid only in conjunction with a current certification and only in the specialty or specialties for which the crane operator is certified. The specialties are lattice boom crawler crane, lattice boom truck crane, telescopic boom cranes with a capacity of more than 17.5 tons and telescopic boom cranes with a capacity of less than 17.5 tons.

C.45:26-8 Eligibility for licensure as crane operator.

8. To be eligible for a license as a crane operator, an applicant shall fulfill the following requirements:

a. Be at least 18 years of age;

b. Receive certification from the National Commission for the Certification of Crane Operators or any other organization found by the board to offer an equivalent testing and certification program meeting the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies;

c. Have at least 1,000 hours of crane-related experience; and

d. Maintain a current medical examiner's certification card.

C.45:26-9 Application, fee, issuance of license.

9. Upon payment to the commissioner of a fee and the submission of a completed written application provided by the commissioner, the commissioner shall issue a crane operator license to any person who meets the eligibility requirements of section 8 of this act.

C.45:26-10 Fees established by rule; use.

10. a. The commissioner shall by rule or regulation establish, prescribe or change the fees for licenses, renewals of licenses or other services provided by the commissioner or the board pursuant to the provisions of this act. Licenses shall be issued for a period of five years and may be renewed when the applicant provides proof of re-certification, except that the board may, in order to stagger the expiration dates thereof, provide that those licenses first issued or renewed after the effective date of this act shall expire or become void on the expiration date of the certification.

b. Fees shall be established, prescribed or changed by the commissioner, in consultation with the board, to the extent necessary to defray all proper expenses incurred by the board, and any staff employed to administer this act, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to support the program costs.

c. All fees and any fines imposed by the commissioner shall be paid to the Department of Labor and shall be directly applied toward enforcement and administrative costs.

C.45:26-11 Refusal to grant, suspension, revocation of license.

11. In addition to the provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the commissioner may refuse to grant or may suspend or revoke a crane operator's license upon proof to the satisfaction of the commissioner that the holder thereof has:

- a. Obtained a certification or license by fraud or deceit;
- b. Fraudulently or deceitfully performed work for which a license is required under this act;
- c. Committed an act of gross negligence;
- d. Falsely advertised;
- e. Acted in a manner which demonstrates incompetence; or
- f. Caused or contributed in any manner that directly or indirectly resulted in an injury to a person or damage to property.

Whenever the commissioner finds cause to refuse to grant, suspend or revoke a crane operator's license pursuant to this act or impose an administrative penalty, he shall notify the licensee of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.45:26-12 Licensed crane operator prohibited to practice as professional engineer.

12. No person licensed as a crane operator pursuant to this act shall engage in the practice of professional engineering, unless licensed as a professional engineer.

C.45:26-13 Enforcement, prosecution.

13. The commissioner shall enforce the provisions of this act, make complaints against persons violating its provisions, and prosecute violations of the same. The commissioner and any authorized person acting under him shall have the authority to enter and inspect any place or establishment covered by this act. If upon inspection the commissioner discovers a condition which exists in violation of the provisions of this act, he shall be authorized to order such violation to cease. The order shall state the items which are in violation of the provisions of the act, and shall provide a reasonable specified time within which the required action shall be taken by the person responsible. If the

violation constitutes an imminent hazard and the commissioner's order is not obeyed, the commissioner may apply for an injunction in the Superior Court of New Jersey. Nothing in this act shall be deemed to prevent the commissioner from prosecuting any violation of this act, notwithstanding that the violations are corrected in accordance with his order.

C.45:26-14 Violations, penalties.

14. It shall be unlawful for any person, partnership, firm association or corporation, and any officer, agent or employee thereof, to violate or proximately contribute to the violation of any of the provisions of this act or of the regulations promulgated pursuant to this act. Any violation of this act by an employee, acting within the scope of his authority, of any person, partnership, firm, association, or corporation shall be deemed also to be the violation of such person, partnership, firm, association or corporation. Violations of the provisions of this act or rules and regulations promulgated pursuant to this act shall be punishable for the first offense by a penalty of not less than \$100 nor more than \$10,000 and for a second or subsequent offense by a penalty of not less than \$500 nor more than \$100,000. The penalties shall be collected in accordance with "The Penalty Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.). If the violation consists of refusal to obey an order of the commissioner made under this act, each day during which the violation continues shall constitute a separate and distinct offense except during the time an appeal from that order may be taken or pending.

C.45:26-15 Settlement of claims.

15. The commissioner, in his discretion, is authorized and empowered to compromise and settle any claim for a penalty under this act for an amount that appears appropriate and equitable under all of the circumstances.

C.45:26-16 Deferral for holders of long boom licenses.

16. Crane operators, holding long boom licenses issued by the State as of the effective date of this act, shall not be required to be licensed pursuant to the provisions of this act until the expiration of their long boom licenses issued by this State.

C.45:26-17 Rules, regulations.

17. The commissioner, after consultation with the board, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act.

18. This act shall take effect on the first day of the seventh month following enactment.

Approved September 4, 2003.

CHAPTER 172

AN ACT concerning the purchase of health benefits coverage by part-time State employees and part-time faculty members at public institutions of higher education in this State and supplementing P.L. 1961, c.49 (C.52:14-17.25 et seq.).

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

C.52:14-17.33a Participation in SHBP for certain part-time faculty, adjuncts.

1. a. Notwithstanding any provision of P.L. 1961, c. 49 (C.52:14-17.25 et seq.) to the contrary, a part-time State employee, or a part-time faculty member, including part-time lecturers and adjunct faculty members, at a public institution of higher education in this State if the public institution of higher education participates in the program, who is enrolled in a State-administered retirement system shall be eligible to participate in the State Health Benefits Program and may purchase health benefits coverage under the program in the State managed care plan as defined in section 2 of P.L. 1961, c.49 (C.52:14-17.26) for the employee or faculty member and the dependents of the employee or faculty member. If such an employee or faculty member elects to enroll in the program, the employee or faculty member shall pay the full cost of the coverage selected and the employer shall not be responsible for any costs in connection with the purchase of the coverage, unless the employer shall be obligated to pay all or a portion of such costs in accordance with the provisions of a binding collective negotiations agreement.

b. The State Health Benefits Commission may establish rules and regulations concerning the enrollment and termination of coverage of employees and faculty members in the State Health Benefits Program, pursuant to this section, and the procedures for the remittance to the program of the cost of coverage.

The employee or faculty member shall also be required to pay a proportionate share of administrative expenses of the program in such amounts and at such times as shall be determined and fixed by the commission. Amounts payable by a participating employee or faculty member for administrative expenses shall be collected in the same manner as premiums or periodic charges are paid and remitted to the State treasury and shall be used for such purposes.

c. The laws and regulations governing the State Health Benefits Program, except as modified in this section, are applicable to enrollments in the program under this section and shall be construed to apply to part-time employees or faculty members and their dependents in the same manner as to full-time employees or faculty members and their dependents to the extent possible.

d. Participation in the State Health Benefits Program pursuant to this section shall not qualify the employee or faculty member for employer or State-paid health care benefits in retirement in the program. Upon retirement, such employees or faculty members shall be permitted to enroll in the State managed care plan they were enrolled in prior to retirement through the retired group at their own expense.

e. The State Health Benefits Commission shall advise eligible employees, and the public institutions of higher education shall advise eligible faculty members, that they may enroll in the State Health Benefits Program pursuant to this section and shall further advise eligible employees and faculty members, as may be appropriate, of any benefits to which they are entitled upon the termination of their employment. The State Health Benefits Commission shall determine the manner and form of the advisory notice to the employees and faculty members.

2. This act shall take effect on January 1, 2004

Approved September 4, 2003.

CHAPTER 173

AN ACT concerning county investigators, amending N.J.S.2A:157-10, and supplementing Title 2A of the New Jersey Statutes.

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

1. N.J.S.2A:157-10 is amended to read as follows:

County investigators generally; appointment, salary, duties.

2A:157-10. In addition to the office of county detective, there is created in the office of the prosecutor, the office or position of county investigator which shall be in the unclassified service of the civil service. The prosecutor of each of the several counties of this State may appoint such number of suitable persons, not in excess of the number, and at salaries not less than the minimum amounts, in this act provided, to be known as county investigators, and to assist the prosecutor in the detection, apprehension, arrest and conviction of offenders against the law. Persons so appointed shall possess all the powers and rights and be subject to all the obligations of police officers, constables and special deputy sheriffs, in criminal matters.

Notwithstanding the provisions of this section, a single probationary or temporary appointment as a county investigator may be made for a total period not exceeding one year.

C.2A:157-10.1 Causes for removal of county investigator.

2. Except as otherwise provided by law, a county investigator employed by the county prosecutor shall not be removed from office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established by the prosecutor, nor shall such investigator be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such investigator. The chief investigator and deputy chief investigator, however, may be removed or demoted by the prosecutor. The complaint shall be filed in the office having charge of the office wherein the complaint is made and a copy shall be served upon the investigator so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 or more than 30 days from the date of service of the complaint.

A complaint charging a violation of the internal rules and regulations established for the conduct of a prosecutor's office shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of an investigator for a violation of the internal rules or regulations of the office is included directly or indirectly within a concurrent investigation of that office for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an investigator shall not apply to a filing of a complaint by a private individual.

A failure to comply with these provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

The investigator may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

For the purposes of this section, the transfer of an investigator from one section or unit to another section or unit within the office of the prosecutor shall not constitute a demotion, and the transferred investigator shall retain his rank, seniority, seniority-related privileges and salary.

C.2A:157-10.2 Subpoena power of those hearing charges.

3. Except as otherwise provided by the law, the officer, board or authority empowered to hear and determine the charge or charges made against a county investigator shall have the power to subpoena witnesses and documentary

evidence. The Superior Court shall have jurisdiction to enforce any such subpoena.

C.2A:157-10.3 Suspension pending hearing.

4. If any county investigator shall be suspended pending a hearing as a result of charges made against him, such hearing, except as otherwise provided by law, shall be commenced within 30 days from the date of the service of the copy of the complaint upon him, in default of which the charges shall be dismissed and the investigator may be returned to duty.

C.2A:157-10.4 Charges, suspension, with or without pay.

5. Notwithstanding any other law to the contrary, whenever a county investigator is charged with an offense, under the laws of this State, another state, or the United States, the investigator may be suspended from performing his duties, with pay, until the case against the investigator is disposed of at trial, the complaint is dismissed, or the prosecution is terminated; provided, however, that if a grand jury returns an indictment against the investigator, or the investigator is charged with a crime of the first, second or third degree or which involves moral turpitude or dishonesty, the investigator may be suspended from his duties, without pay, until the case against him is disposed of at trial, the complaint is dismissed, or the prosecution is terminated.

C.2A:157-10.5 Reinstatement, recovery of pay.

6. If a suspended county investigator is found not guilty at trial, the charges are dismissed or the prosecution is terminated, the investigator shall be reinstated to his position and shall be entitled to recover all pay withheld during the period of suspension subject to any disciplinary proceedings or administrative action.

C.2A:157-10.6 Recovery of salary for unlawful suspension.

7. Whenever any county investigator shall be suspended or dismissed from his office, employment or position and that suspension or dismissal shall be judicially determined to be illegal, the investigator shall be entitled to recover his salary from the date of such suspension or dismissal, provided a written application therefor shall be filed with the prosecutor's office within 30 days after such judicial determination.

C.2A:157-10.7 Review by Superior Court.

8. Any county investigator who has been tried and convicted of any charge or charges, and is employed by a prosecutor in a county where Title 11A (Civil Service) of the New Jersey Statutes is not in operation, may obtain a review thereof by the Superior Court. Such review shall be obtained by serving a written notice of an application therefor upon the party or board whose action is to be reviewed within 10 days after written notice to the investigator of the conviction. The party or board shall transmit to the court a copy of the record

of such conviction, and of the charge or charges for which the applicant was tried. The court shall hear the cause de novo on the record below and may either affirm, reverse or modify such conviction. If the applicant was removed from his office, employment or position, the court may direct that he be restored to such office, employment or position, and to all his rights pertaining thereto, and may take such other order or judgement as the court deems proper. Either party may supplement the record with additional testimony subject to the rules of evidence.

C.2A:157-10.8 Provision of means for defense, reimbursement.

9. Whenever a county investigator is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the prosecutor shall provide the investigator with the necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the prosecutor or in a criminal proceeding instituted as a result of a complaint on behalf of the prosecutor. If any such disciplinary or criminal proceeding instituted by or on complaint of the prosecutor shall be dismissed or finally determined in favor of the investigator, he shall be reimbursed for the expense of his defense.

10. This act shall take effect on the 120th day after enactment.

Approved September 9, 2003.

CHAPTER 174

AN ACT concerning health warnings about mercury contamination and supplementing Title 26 of the Revised Statutes.

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

C.26:2-179 Consumer's mercury alert notice, posting distribution.

1. The Department of Health and Senior Services, in consultation with the Department of Environmental Protection, shall prepare a consumer's mercury alert notice for posting in all patient areas of professional medical offices that provide gynecological, obstetrical or pediatric care and in the patient or client areas of all maternal and child health and nutrition programs. The notice shall explain the danger to women who expect to become pregnant, women who are pregnant or breast feeding their children, and young children, of eating mercury contaminated fish. The notice shall summarize the State's

and the federal government's most current mercury health advisories concerning fish consumption and shall contain such other information as the department deems appropriate. The notice also shall list any telephone number that may be established for State residents to call for further information about the health advisories.

The department shall distribute the notice, at no charge, to all professional medical offices that provide gynecological, obstetrical or pediatric care and to all publicly funded maternal and child health and nutrition programs in the State. The department shall update the notice as necessary, and shall make additional copies of the notice available to health care providers upon request.

2. This act shall take effect 60 days after enactment.

Approved September 10, 2003.

CHAPTER 175

AN ACT concerning county identification cards, amending P.L.2000, c.87, P.L.1987, c.228, R.S.33:1-77, and P.L.1968, c.313 and repealing sections 2 through 5 of P.L.1968, c.313.

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

1. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to read as follows:

C.2A:170-51.4 Sale, distribution of tobacco to persons under age 18, prohibited; civil penalties.

1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under 18 years of age, any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser of the tobacco product or the recipient of the promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission in the Department of Transportation, or a similar card issued pursuant to the laws of another state or the federal government of Canada,

that the purchaser or recipient was of legal age to make the purchase or receive the sample;

(2) that the appearance of the purchaser of the tobacco product or the recipient of the promotional sample was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to make the purchase or receive the sample; and

(3) that the sale or distribution of the tobacco product was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to make the purchase or receive the sample.

c. A person who violates the provisions of subsection a. of this section shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and \$1,000 for the third and each subsequent violation. The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes or a law enforcement officer having enforcement authority in that municipality may issue a summons for a violation of the provisions of subsection a. of this section, and may serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

d. In addition to the provisions of subsection c. of this section, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation in the Department of the Treasury may suspend or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke the license issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail dealer. The licensee shall be subject to administrative charges, based on a schedule issued by the Director of the Division of Taxation, which may provide for a monetary penalty in lieu of a suspension.

e. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 3 of P.L.1999, c.90 (C.2C:33-13.1).

2. Section 4 of P.L.1987, c.228 (C.2C:39-9.1) is amended to read as follows:

C.2C:39-9.1 Sale of knives to minors; crime of the fourth degree; exceptions.

4. A person who sells any hunting, fishing, combat or survival knife having a blade length of five inches or more or an overall length of 10 inches or more to a person under 18 years of age commits a crime of the fourth degree; except that the establishment by a preponderance of the evidence of all of the following facts by a person making the sale shall constitute an affirmative defense to any prosecution therefor: a. that the purchaser falsely represented his age by producing a driver's license bearing a photograph of the licensee, or by producing a photographic identification card issued pursuant to section 2 of P.L.1980, c. 47 (C.39:3-29.3), or by producing a similar card purporting to be a valid identification card indicating that he was 18 years of age or older, and b. that the appearance of the purchaser was such that an ordinary prudent person would believe him to be 18 years of age or older, and c. that the sale was made in good faith relying upon the indicators of age listed in a. and b. above.

3. R.S.33:1-77 is amended to read as follows:

Defenses of sellers.

33:1-77. Anyone who sells any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages is a disorderly person; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the purchaser falsely represented in writing, or by producing a driver's license bearing a photograph of the licensee, or by producing a photographic identification card issued pursuant to section 2 of P.L.1980, c. 47 (C.39:3-29.3), or a similar card issued pursuant to the laws of this State, another state or the federal government that he or she was of legal age to make the purchase, (b) that the appearance of the purchaser was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase, and (c) that the sale was made in good faith relying upon such written representation, or production of a driver's license bearing a photograph of the licensee, or production of a photographic identification card issued pursuant to section 2 of P.L.1980, c. 47 (C.39:3-29.3), or a similar card issued pursuant to the laws of this State, another state or the federal government and appearance and in the reasonable belief that the purchaser was actually of legal age to make the purchase.

4. Section 1 of P.L.1968, c.313 (C.33:1-81.2) is amended to read as follows:

C.33:1-81.2 Identification card; contents.

1. The county clerk in any county shall before the effective date of P.L.2003, c.175 issue, upon application of any resident of that county who shall have attained the age of 21 years, and who shall have supplied the clerk with the necessary information required by rules and regulations made by the Director of Alcoholic Beverage Control, an identification card bearing the applicant's date of birth, physical description, photograph, signature, and such other information, as said regulation may require, attesting to the age of the applicant. The identification card shall be signed by the applicant in the clerk's presence. Such cards shall be numbered and a permanent record thereof maintained by the clerk. No further cards shall be issued on or after the effective date of P.L.2003, c.175 and cards issued prior to that date shall have no validity on or after the effective date of P.L.2003, c.175; provided however, that the county clerk shall continue to maintain the permanent record of each card previously issued pursuant to the authority of this section.

Repealer.

5. Sections 2 through 5 of P.L.1968, c.313 (C.33:1-81.3 through 33:1-81.6) are hereby repealed.

6. This act shall take effect immediately.

Approved September 10, 2003.

CHAPTER 176

AN ACT concerning organic farming and supplementing Title 4 of the Revised Statutes.

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

C.4:10-79 Establishment of organic certification program.

1. a. The Secretary of Agriculture shall establish an organic certification program. In establishing the program, the secretary shall consider any national standards that may be adopted by the United States Department of Agriculture for agricultural products.

b. In establishing an organic certification program, the secretary may:

(1) designate one or more organizations to certify organic farming and handling practices, and provide that a designated certifying organization may charge fees to cover reasonable costs associated with the certification process;

(2) establish certification procedures for "certified organic" and "transitional sustainable";

(3) design a label to be affixed to agricultural products that receive certification as "certified organic" or "transitional sustainable," as appropriate; and

(4) charge fees to cover reasonable additional costs associated with the organic certification program and the federal program requirements.

c. The secretary shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement an organic certification program, which rules and regulations may include, but need not be limited to, a list of approved, regulated and prohibited production practices and substances.

2. This act shall take effect immediately.

Approved September 10, 2003.

CHAPTER 177

AN ACT concerning bail in certain circumstances and amending P.L.1994, c.144.

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

1. Section 1 of P.L.1994, c.144 (C.2A:162-12) is amended to read as follows:

C.2A:162-12 Crimes with bail restrictions; posting of bail.

1. a. As used in this section:

"Crime with bail restrictions" means a crime of the first or second degree charged under any of the following sections:

- (1) Murder 2C:11-3.
- (2) Manslaughter 2C:11-4.
- (3) Kidnaping 2C:13-1.
- (4) Sexual Assault 2C:14-2.
- (5) Robbery 2C:15-1.
- (6) Carjacking P.L.1993,c.221,s.1 (C.2C:15-2).

- (7) Arson and Related Offenses 2C:17-1.
- (8) Causing or Risking Widespread Injury or Damage 2C:17-2.
- (9) Burglary 2C:18-2.
- (10) Theft by Extortion 2C:20-5.
- (11) Endangering the Welfare of Children 2C:24-4.
- (12) Resisting Arrest; Eluding Officer 2C:29-2.
- (13) Escape 2C:29-5.
- (14) Corrupting or Influencing a Jury 2C:29-8.
- (15) Possession of Weapons for Unlawful Purposes . . 2C:39-4.
- (16) Weapons Training for Illegal
Activities P.L.1983,c.229,s.1 (C.2C:39-14).

"Crime with bail restrictions" also includes any first or second degree drug-related crimes under chapter 35 of Title 2C of the New Jersey Statutes and any first or second degree racketeering crimes under chapter 41 of Title 2C of the New Jersey Statutes.

b. Subject to the provisions of subsection c. of this section, a person charged with a crime with bail restrictions may post the required amount of bail only in the form of:

- (1) Full cash;
- (2) A surety bond executed by a corporation authorized under chapter 31 of Title 17 of the Revised Statutes; or
- (3) A bail bond secured by real property situated in this State with an unencumbered equity equal to the amount of bail undertaken plus \$20,000.

c. There shall be a presumption in favor of the court designating the posting of full United States currency cash bail to the exclusion of other forms of bail when a defendant is charged with an offense as set forth in subsection a. of this section and:

- (1) has two other indictable cases pending at the time of the arrest; or
 - (2) has two prior convictions for a first or second degree crime or for a violation of section 1 of P.L.1987, c.101 (C.2C:35-7) or any combination thereof; or
 - (3) has one prior conviction for murder, aggravated manslaughter, aggravated sexual assault, kidnapping or bail jumping; or
 - (4) was on parole at the time of the arrest,
- unless the court finds on the record that another form of bail authorized in subsection b. of this section will ensure the defendant's presence in court when required.

d. When bail is posted in the form of a bail bond secured by real property, the owner of the real property, whether the person is admitted to bail or a surety, shall also file an affidavit containing:

- (1) A legal description of the real property;
- (2) A description of each encumbrance on the real property;

(3) The market value of the unencumbered equity owned by the affiant as determined in a full appraisal conducted by an appraiser licensed by the State of New Jersey; and

(4) A statement that the affiant is the sole owner of the unencumbered equity.

e. Nothing herein is intended to preclude a court from releasing a person on the person's own recognizance when the court determines that such person is deserving.

2. This act shall take effect immediately.

Approved September 12, 2003.

CHAPTER 178

AN ACT concerning eligible collateral for governmental unit deposits and amending P.L.1970, c.236.

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

1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read as follows:

C.17:9-41 Definitions.

1. In this act, unless the context otherwise requires:

"Association" means any State or federally chartered savings and loan association;

"Capital funds" means (a) in the case of a State bank or national bank or capital stock savings bank, the aggregate of the capital stock, surplus and undivided profits of the bank or savings bank; (b) in the case of a mutual savings bank, the aggregate of the capital deposits, if any, and the surplus of the savings bank; and (c) in the case of an association, the aggregate of all reserves required by any law or regulation, and the undivided profits, if any, of the association;

"Commissioner" means the Commissioner of Banking and Insurance;

"Defaulting depository" means a public depository as to which an event of default has occurred;

"Eligible collateral" means:

(a) Obligations of any of the following:

(1) The United States;

(2) Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government

National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

(3) The State of New Jersey or any of its political subdivisions;

(4) Any other governmental unit; or

(b) Obligations guaranteed or insured by any of the following, to the extent of that insurance or guaranty:

(1) The United States;

(2) Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

(3) The State of New Jersey or any of its political subdivisions; or

(c) Obligations now or hereafter authorized by law as security for public deposits;

(d) Obligations in which the State, political subdivisions of the State, their officers, boards, commissions, departments and agencies may invest pursuant to an express authorization under any law authorizing the issuance of those obligations;

(e) Obligations, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank; or

(f) Any other obligations as may be approved by the commissioner by regulation or by specific approval;

"Event of default" means issuance of an order of a supervisory authority or of a receiver restraining a public depository from making payments of deposit liabilities;

"Governmental unit" means any county, municipality, school district or any public body corporate and politic created or established under any law of this State by or on behalf of any one or more counties or municipalities, or any board, commission, department or agency of any of the foregoing having custody of funds;

"Maximum liability" of a public depository means, with respect to any event of default, a sum equal to 5% of the average daily balance of collected public funds held on deposit by the depository during the six-month period ending on the last day of the month next preceding the occurrence of such event of default;

"Net deposit liability" means the deposit liability of a defaulting depository to a governmental unit after deduction of any deposit insurance with respect thereto;

"Obligations" means any bonds, notes, capital notes, bond anticipation notes, tax anticipation notes, temporary notes, loan bonds, mortgage related securities, or mortgages;

"Public depository" means a State or federally chartered bank, savings bank or an association located in this State or a state or federally chartered bank, savings bank or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation and which receives or holds public funds on deposit;

"Public funds" means the funds of any governmental unit, but does not include deposits held by the State of New Jersey Cash Management Fund;

"Valuation date" means December 31 and June 30.

2. This act shall take effect on the first business day after enactment.

Approved September 12, 2003.

CHAPTER 179

AN ACT concerning the regulation of surplus lines policies and amending P.L.1960, c.32.

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

1. Section 8 of P.L.1960, c.32 (C.17:22-6.42) is amended to read as follows:

C17:22-6.42 Procurement of surplus line coverages; conditions.

8. If certain insurance coverages of subjects resident, located, or to be performed in this State cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(a) The insurance must be eligible for export under section 9 of P.L.1960, c.32 (C.17:22-6.43);

(b) The insurer must be an eligible surplus lines insurer under section 11 of P.L.1960, c.32 (C.17:22-6.45);

(c) The insurance must be so placed through a licensed New Jersey surplus lines agent; and

(d) Other applicable provisions of this surplus lines law must be complied with.

(e) No surplus lines agent shall exercise binding authority in this State on behalf of any insurer unless the agent has first filed with the commissioner for informational purposes and not for the purpose of approval or disapproval

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the written agreement between the agent and the insurer setting forth the terms, conditions and limitations governing the exercise of the binding authority by the agent. A copy of any amendments to the agreement and of any notice of cancellation or termination of the agreement shall be filed by the agent with the commissioner no later than 10 days after adoption thereof.

The agreement filed pursuant to this section shall be considered and treated as a confidential document, and shall not be available for inspection by the public.

The agreement shall include the following items:

- (1) A description of the classes of insurance for which the agent holds binding authority;
- (2) The geographical limits upon the exercise of binding authority by the agent;
- (3) The maximum dollar limitation on the binding authority of the agent for any one risk for each class of insurance written by the agent;
- (4) The maximum policy period for which the agent may bind a risk;
- (5) If the binding authority is delegable by the agent, a prohibition against the delegation without the prior written approval of the insurer.

If an agent who is qualified in accordance with this section to exercise binding authority on behalf of an insurer delegates the binding authority to any other agent, the agent to whom the authority is delegated shall not exercise the same until a copy of the instrument delegating the binding authority shall first have been filed with the commissioner for informational purposes and not for the purpose of approval or disapproval. The instrument delegating the binding authority shall include an identification of the binding authority agreement between the delegating agent and the insurer.

(f) Forms used by eligible surplus lines insurers pursuant to P.L. 1960, c.32 (C.17:22-6.40 et seq.) shall not be subject to the insurance laws and regulations of this State except to the extent that P.L. 1960, c.32 (C.17:22-6.40 et seq.) regulates those forms. For purposes of this subsection, "eligible surplus lines insurers" include eligible surplus lines insurers and unauthorized insurers, which pursuant to section 11 of P.L. 1960, c.32 (C.17:22-6.45), are insuring risks which are eligible for export but insurance coverage thereon, in whole or in part, is not procurable from eligible surplus lines insurers.

2. Section 9 of P.L. 1960, c. 32 (C.17:22-6.43) is amended to read as follows:

C.17:22-6.43 Eligibility for export of insurance coverage; conditions.

9. No insurance coverage shall be eligible for export unless it meets all of the following conditions:

- (a) The insurance coverage required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact

that kind and class of insurance in this State, and the insurance coverage exported shall be only that coverage not so procurable from authorized insurers, provided, however, that associated commercial general liability and commercial property coverages may be exported along with such unprocurable coverage; and

(b) The premium rate at which the coverage is exported shall not be lower than the lowest rate which has been filed by or on behalf of any authorized insurer, provided, however, that any reduction in coverage or limits as compared to policies filed by authorized insurers may be exported at a commensurate reduction in premium rate.

(c) (Deleted by amendment, P.L.2003, c.179.)

Except, that the commissioner shall by rules and regulations declare eligible for export generally and notwithstanding the provisions of subsections (a) and (b) above, any class or classes of insurance coverage or risk for which he finds, after a hearing, which he shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this State, that there is no reasonable or adequate market among authorized insurers. The notice of such hearing shall provide interested parties with the opportunity to present relevant information at the hearing for the commissioner's consideration. Any such rules and regulations shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner. The commissioner shall notify all surplus lines agents of such termination.

3. This act shall take effect immediately.

Approved September 12, 2003.

CHAPTER 180

AN ACT concerning the Law Against Discrimination and amending various parts of the statutory law.

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

1. Section 7 of P.L.1990, c.55 (C.2A:42-109) is amended to read as follows:

C.2A:42-109 Rights of person with disabilities.

7. Nothing in this act shall impair the rights of a person with disabilities to own, harbor or care for a domesticated animal, including guide dogs and

service dogs, in accordance with the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

2. Section 134 of P.L.1977, c.110 (C.5:12-134) is amended to read as follows:

C.5:12-134 Equal employment opportunity; requirements of license.

134. a. Each applicant at the time of submitting architectural plans or site plans to the commission for approval of proposed construction, renovation or reconstruction of any structure or facility to be used as an approved hotel or casino shall accompany same with a written guaranty that all contracts and subcontracts to be awarded in connection therewith shall contain appropriate provisions by which contractors and subcontractors or their assignees agree to afford an equal employment opportunity to all prospective employees and to all actual employees to be employed by the contractor or subcontractor in accordance with an affirmative action program approved by the commission and consonant with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). On and after the effective date of this amendatory act an applicant shall also be required to demonstrate that equal employment opportunities in accordance with the aforesaid affirmative-action program in compliance with P.L.1945, c.169 have been afforded to all prospective employees and to all actual employees employed by a contractor or subcontractor in connection with the actual construction, renovation or reconstruction of any structure or facility to be used as an approved hotel or casino prior to submission of architectural plans or site plans to the commission.

b. No license shall be issued by the commission to any applicant, including a casino service industry as defined in section 12 of this act, who has not agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative-action program approved by the commission and consonant with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

c. Each applicant shall formulate for commission approval and abide by an affirmative-action program of equal opportunity whereby the applicant guarantees to provide equal employment opportunity to rehabilitated offenders eligible under sections 90 and 91 of this act and members of minority groups qualified for licensure in all employment categories, including a person with a disability, in accordance with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), except in the case of the mentally handicapped, if it can be clearly shown that such disability would prevent such person from performing a particular job.

d. Any license issued by the commission in violation of this section shall be null and void.

3. Section 3 of P.L. 1945, c. 169 (C. 10:5-3) is amended to read as follows:

C.10:5-3 Findings, declarations.

3. The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality, are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State; provided, however, that nothing in this expression of policy prevents the making of legitimate distinctions between citizens and aliens when required by federal law or otherwise necessary to promote the national interest.

The Legislature further declares its opposition to such practices of discrimination when directed against any person by reason of the race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, liability for service in the Armed Forces of the United States, disability or nationality of that person or that person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, in order that the economic prosperity and general welfare of the inhabitants of the State may be protected and ensured.

The Legislature further finds that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm. The personal hardships include: economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from the strain of employment controversies; relocation, search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; career, education, family and social disruption; and adjustment problems, which particularly impact on those protected by this act. Such harms have, under the common law, given rise to legal remedies, including compensatory and punitive damages. The Legislature intends that such damages be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

4. Section 4 of P.L. 1945, c. 169 (C. 10:5-4) is amended to read as follows:

C.10:5-4 Obtaining employment, accommodations and privileges without discrimination; civil right.

4. All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of

any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

5. Section 2 of P.L. 1972, c. 114 (C.10:5-4.1) is amended to read as follows:

C.10:5-4.1 Construction of act.

2. All of the provisions of the act to which this act is a supplement shall be construed to prohibit any unlawful discrimination against any person because such person is or has been at any time disabled or any unlawful employment practice against such person, unless the nature and extent of the disability reasonably precludes the performance of the particular employment. It shall be unlawful discrimination under the "Law Against Discrimination," P.L. 1945, c. 169 (C.10:5-1 et seq.) to discriminate against any buyer or renter because of the disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or because of any person associated with the buyer or renter.

6. Section 5 of P.L. 1945, c. 169 (C.10:5-5) is amended to read as follows:

C.10:5-5 Definitions relative to discrimination.

5. As used in this act, unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" include only those unlawful practices and acts specified in section 11 of this act.

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of this act, and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies.

f. "Employee" does not include any individual employed in the domestic service of any person.

g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. "Division" means the "Division on Civil Rights" created by this act.

i. "Attorney General" means the Attorney General of the State of New Jersey or his representative or designee.

j. "Commission" means the Commission on Civil Rights created by this act.

k. "Director" means the Director of the Division on Civil Rights.

l. "A place of public accommodation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water, or in the air, any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post secondary school from using in good faith criteria other

than race, creed, color, national origin, ancestry or affectional or sexual orientation in the admission of students.

m. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, in the sale, lease or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under this act regarding discrimination on the basis of familial status apply with respect to housing for older persons.

o. "Real estate broker" includes a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real

estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesperson" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. "Disability" means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

r. "Blind person" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist deaf persons or which is fitted with a special harness so as to be suitable as an aid to the mobility of a blind person, and is used by a blind person who has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind or deaf as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the

rehabilitation of persons with disabilities as reputable and competent to provide dogs with training, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally or customarily permitted or invited.

w. "Deaf person" means any person whose hearing is so severely impaired that the person is unable to hear and understand normal conversational speech through the unaided ear alone, and who must depend primarily on a supportive device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. "Service dog" means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

ee. "Qualified Medicaid applicant" means an individual who is a qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

ff. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

gg. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. "Affectional or sexual orientation" means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.

ii. "Heterosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. "Homosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. "Bisexuality" means affectional, emotional or physical attraction or behavior which is directed towards persons of either gender.

ll. "Familial status" means being the natural parent of a child, the adoptive parent of a child, the foster parent of a child, having a "parent and child relationship" with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. "Housing for older persons" means housing:

(1) provided under any State program that the Attorney General determines is specifically designed and operated to assist elderly persons (as defined in the State program); or provided under any federal program that the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the federal program); or

(2) intended for, and solely occupied by persons 62 years of age or older; or

(3) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Attorney General shall adopt regulations which require at least the following factors:

(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of

such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

nn. "Genetic characteristic" means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome.

oo. "Genetic information" means the information about genes, gene products or inherited characteristics that may derive from an individual or family member.

pp. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to identify a predisposing genetic characteristic.

7. Section 6 of P.L.1945, c.169 (C.10:5-6) is amended to read as follows:

C.10:5-6 Division on Civil Rights created; powers.

6. There is created in the Department of Law and Public Safety a division known as "The Division on Civil Rights" with power to prevent and eliminate discrimination in the manner prohibited by this act against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, nationality, disability, or sex or because of their liability for service in the Armed Forces of the United States, by employers, labor organizations, employment agencies or other persons and to take other actions against discrimination because of race, creed, color, national origin, ancestry, marital status, sex, familial status, nationality, disability, or age or because of their liability for service in the Armed Forces of the United States, as herein provided; and the division created hereunder is given general jurisdiction and authority for such purposes.

8. Section 8 of P.L.1945, c.169 (C.10:5-8) is amended to read as follows:

C.10:5-8 Attorney General's powers and duties.

8. The Attorney General shall:
 - a. Exercise all powers of the division not vested in the commission.
 - b. Administer the work of the division.
 - c. Organize the division into sections, which shall include but not be limited to a section which shall receive, investigate, and act upon complaints alleging discrimination against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality or sex or because of their liability for service in the Armed Forces of the United States; and another which shall, in order to eliminate prejudice and to further good will among the various racial and religious and nationality groups in this State, study, recommend, prepare and implement, in cooperation with such other departments of the State Government or any other agencies, groups or entities both public and private, such educational and human relations programs as are consonant with the objectives of this act; and prescribe the organization of said sections and the duties of his subordinates and assistants.
 - d. Appoint a Director of the Division on Civil Rights, who shall act for the Attorney General, in the Attorney General's place and with the Attorney General's powers, which appointment shall be subject to the approval of the commission and the Governor, a deputy director and such assistant directors, field representatives and assistants as may be necessary for the proper administration of the division and fix their compensation within the limits of available appropriations. The director, deputy director, assistant directors, field representatives and assistants shall not be subject to the Civil Service Act and shall be removable by the Attorney General at will.
 - e. Appoint such clerical force and employees as the Attorney General may deem necessary and fix their duties, all of whom shall be subject to the Civil Service Act.
 - f. Maintain liaison with local and State officials and agencies concerned with matters related to the work of the division.
 - g. Adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this act.
 - h. Conduct investigations, receive complaints and conduct hearings thereon other than those complaints received and hearings held pursuant to the provisions of this act.
 - i. In connection with any investigation or hearing held pursuant to the provisions of this act, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person, under oath, and, in connection therewith, require the production for examination of any books or papers relating to any subject matter under investigation or in question by the division and conduct

such discovery procedures which may include the taking of interrogatories and oral depositions as shall be deemed necessary by the Attorney General in any investigation. The Attorney General may make rules as to the issuance of subpoenas by the director. The failure of any witness when duly subpoenaed to attend, give testimony, or produce evidence shall be punishable by the Superior Court of New Jersey in the same manner as such failure is punishable by such court in a case therein pending.

j. Issue such publications and such results of investigations and research tending to promote good will and to minimize or eliminate discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality or sex, as the commission shall direct, subject to available appropriations.

k. Render each year to the Governor and Legislature a full written report of all the activities of the division.

l. Appoint, subject to the approval of the commission, a panel of not more than five hearing examiners, each of whom shall be duly licensed to practice law in this State for a period of at least five years, and each to serve for a term of one year and until his successor is appointed, any one of whom the director may designate in his place to conduct any hearing and recommend findings of fact and conclusions of law. The hearing examiners shall receive such compensation as may be determined by the Attorney General, subject to available appropriations.

9. Section 1 of P.L.1954, c.198 (C.10:5-9.1) is amended to read as follows:

C.10:5-9.1 Enforcement of laws against discrimination in public housing and real property.

1. The Division on Civil Rights in the Department of Law and Public Safety shall enforce the laws of this State against discrimination in housing built with, or leased with the assistance of, public funds or public assistance, pursuant to any law, and in real property, as defined in the law hereby supplemented, because of race, religious principles, color, national origin, ancestry, marital status, affectional or sexual orientation, familial status, disability, nationality, sex or source of lawful income used for rental or mortgage payments. The said laws shall be so enforced in the manner prescribed in the act to which this act is a supplement.

10. Section 13 of P.L.1992, c.146 (C.10:5-9.2) is amended to read as follows:

C.10:5-9.2 Division on Civil Rights qualified as "certified agency."

13. The provisions of this amendatory and supplementary act, P.L.1992, c.146 (C.10:5-12.4 et al.), and P.L.2003, c.180, are intended to permit the Division on Civil Rights in the Department of Law and Public Safety to qualify

as a "certified agency" within the meaning of the Federal Fair Housing Amendments Act, Pub.L. 100-430 (42 U.S.C. s.3610 (f)), and shall be construed as consistent with that purpose. Nothing in P.L.1992, c.146 (C.10:5-12.4 et al.) and P.L.2003, c.180, shall be construed to permit conduct prohibited by the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), prior to the effective date of P.L.2003, c.180.

11. Section 9 of P.L.1945, c.169 (C.10:5-10) is amended to read as follows:

C.10:5-10 Commission's powers and duties; local commissions.

9. The commission shall:

- a. Consult with and advise the Attorney General with respect to the work of the division.
- b. Survey and study the operations of the division.
- c. Report to the Governor and the Legislature with respect to such matters relating to the work of the division and at such times as it may deem in the public interest.

The mayors or chief executive officers of the municipalities in the State may appoint local commissions on civil rights to aid in effectuating the purposes of this act. Such local commissions shall be composed of representative citizens serving without compensation. Such commissions shall attempt to foster through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the inhabitants of the community, and they may be empowered by the local governing bodies to make recommendations to them for the development of policies and procedures in general and for programs of formal and informal education that will aid in eliminating all types of discrimination based on race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality or sex.

12. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read as follows:

C.10:5-12 Unlawful employment practices, discrimination.

11. It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

- a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, genetic information, sex, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require

to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age; provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee; provided further, that it shall not be an unlawful employment practice to require the retirement of any employee who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if that employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit sharing, savings or deferred retirement plan, or any combination of those plans, of the employer of that employee which equals in the aggregate at least \$27,000.00; and provided further that an employer may restrict employment to citizens of the United States where such restriction is required by federal law or is otherwise necessary to protect the national interest.

For the purposes of this subsection, a "bona fide executive" is a top level employee who exercises substantial executive authority over a significant number of employees and a large volume of business. A "high policy-making position" is a position in which a person plays a significant role in developing policy and in recommending the implementation thereof.

b. For a labor organization, because of the race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, disability or sex of any individual, or because of the liability for service in the Armed Forces of the United States or nationality of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members, against any applicant for, or individual included in, any apprentice or other training program or against any employer or any individual employed by an employer; provided, however, that nothing herein contained

shall be construed to bar a labor organization from excluding from its apprentice or other training programs any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular apprentice or other training program.

c. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment, or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, disability, nationality or sex or liability of any applicant for employment for service in the Armed Forces of the United States, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

d. For any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act or because that person has filed a complaint, testified or assisted in any proceeding under this act or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

e. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

f. (1) For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, disability or nationality of such person, or that the patronage or custom thereof of any person of any particular race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, disability or nationality is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any action

that the same was authorized by such person; provided, however, that nothing contained herein shall be construed to bar any place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex, and which shall include but not be limited to any summer camp, day camp, or resort camp, bathhouse, dressing room, swimming pool, gymnasium, comfort station, dispensary, clinic or hospital, or school or educational institution which is restricted exclusively to individuals of one sex, from refusing, withholding from or denying to any individual of the opposite sex any of the accommodations, advantages, facilities or privileges thereof on the basis of sex; provided further, that the foregoing limitation shall not apply to any restaurant as defined in R.S.33:1-1 or place where alcoholic beverages are served.

(2) Notwithstanding the definition of "public accommodation" as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor, manager, superintendent, agent, or employee of any private club or association to directly or indirectly refuse, withhold from or deny to any individual who has been accepted as a club member and has contracted for or is otherwise entitled to full club membership any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any member in the furnishing thereof on account of the race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, disability or nationality of such person.

In addition to the penalties otherwise provided for a violation of P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of subsection f. of this section is the holder of an alcoholic beverage license issued under the provisions of R.S.33:1-12 for that private club or association, the matter shall be referred to the Director of the Division of Alcoholic Beverage Control who shall impose an appropriate penalty in accordance with the procedures set forth in R.S.33:1-31.

g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments;

(2) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, familial status, disability, nationality or source of lawful income used for rental or mortgage payments in the terms, conditions or

privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

h. For any person, including but not limited to, any real estate broker, real estate salesperson, or employee or agent thereof:

(1) To refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease, assignment, or sublease any real property or part or portion thereof to any person or group of persons or to refuse to negotiate for the sale, rental, lease, assignment, or sublease of any real property or part or portion thereof to any person or group of persons because of race, creed, color, national origin, ancestry, marital status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage

payments, or to represent that any real property or portion thereof is not available for inspection, sale, rental, lease, assignment, or sublease when in fact it is so available, or otherwise to deny or withhold any real property or any part or portion of facilities thereof to or from any person or group of persons because of race, creed, color, national origin, ancestry, marital status, familial status, sex, affectional or sexual orientation, disability or nationality;

(2) To discriminate against any person because of race, creed, color, national origin, ancestry, marital status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental, lease, assignment or sublease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection h., shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied exclusively by individuals of one sex to any individual of the opposite sex on the basis of sex;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of

a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L. 1945, c. 169 (C.10:5-5).

i. For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution involved in the making or purchasing of any loan or extension of credit, for whatever purpose, whether secured by residential real estate or not, including but not limited to financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof or any agent or employee thereof:

(1) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, disability, familial status or nationality, in the granting, withholding, extending, modifying, renewing, or purchasing, or in the fixing of the rates, terms, conditions or provisions of any such loan, extension of credit or financial assistance or purchase thereof or in the extension of services in connection therewith;

(2) To use any form of application for such loan, extension of credit or financial assistance or to make record or inquiry in connection with applications for any such loan, extension of credit or financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, disability, familial status or nationality or any intent to make any such limitation, specification or discrimination; unless otherwise required by law or regulation to retain or use such information;

(3) (Deleted by amendment, P.L. 2003, c. 180).

(4) To discriminate against any person or group of persons because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To discriminate against any person or group of persons because that person's family includes children under 18 years of age, or to make an agreement or mortgage which provides that the agreement or mortgage shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L. 1945, c. 169 (C.10:5-5).

j. For any person whose activities are included within the scope of this act to refuse to post or display such notices concerning the rights or responsibilities of persons affected by this act as the Attorney General may by regulation require.

k. For any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership, or organization, for the purpose of inducing a transaction for the sale or rental of real property from which transaction such person or any of its members may benefit

financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, ancestry, marital status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including, but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

1. For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers. This subsection shall not prohibit refusals or other actions (1) pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or (2) made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

m. For any person to:

(1) Grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provisions requiring any person to discriminate against or to certify that he, she or it has not dealt with any other person on the basis of the race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, disability, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

(2) Refuse to grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision or certification.

The provisions of this subsection shall not apply to any letter of credit, contract, or other document which contains any provision pertaining to employee-employer collective bargaining, a labor dispute or an unfair labor practice, or made in connection with the protest of unlawful discrimination

or an unlawful employment practice, if the other provisions of such letter of credit, contract, or other document do not otherwise violate the provisions of this subsection.

n. For any person to aid, abet, incite, compel, coerce, or induce the doing of any act forbidden by subsections l. and m. of section 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to do so. Such prohibited conduct shall include, but not be limited to:

(1) Buying from, selling to, leasing from or to, licensing, contracting with, trading with, providing goods, services, or information to, or otherwise doing business with any person because that person does, or agrees or attempts to do, any such act or any act prohibited by this subsection; or

(2) Boycotting, commercially blacklisting or refusing to buy from, sell to, lease from or to, license, contract with, provide goods, services or information to, or otherwise do business with any person because that person has not done or refuses to do any such act or any act prohibited by this subsection; provided that this subsection shall not prohibit refusals or other actions either pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

o. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such organization, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, familial status, sex, affectional or sexual orientation, disability or nationality.

13. Section 12 of P.L.1992, c.146 (C.10:5-12.5) is amended to read as follows:

C.10:5-12.5 Regulation of land use, housing, unlawful discrimination.

12. a. It shall be an unlawful discrimination for a municipality, county or other local civil or political subdivision of the State of New Jersey, or an officer, employee, or agent thereof, to exercise the power to regulate land use or housing in a manner that discriminates on the basis of race, creed, color, national origin, ancestry, marital status, familial status, sex, nationality or disability.

b. Notwithstanding the provisions of section 12 of P.L.1945, c.169 (C.10:5-13) any person claiming to be aggrieved by an unlawful discrimination under this section shall enforce this section by private right of action in Superior Court. This section shall not apply to discrimination in housing owned or managed by a municipality, county or other local civil or political subdivision

of the State of New Jersey where such discrimination is otherwise prohibited by section 11 of P.L.1945, c.169 (C.10:5-12).

14. Section 13 of P.L.1945, c.169 (C.10:5-14) is amended to read as follows:

C.10:5-14 Investigation of complaint; Attorney General's duties.

13. After the filing of any complaint, the Attorney General shall cause prompt investigation to be made in connection therewith and advise the complainant of the results thereof. During the period beginning with the filing of such complaint and ending with the closure of the case or 45 days from the date of a finding of probable cause, the Attorney General shall, to the extent feasible, engage in conciliation with respect to such complaint. Neither the Attorney General nor any officer or employee of the division shall disclose any conversation between the Attorney General or a representative and the respondent or a representative at such conference, except that the Attorney General and any officer or employee may disclose the terms of a settlement offer to the complainant or other aggrieved person on whose behalf the complaint was filed.

15. Section 15 of P.L.1945, c.169 (C.10:5-16) is amended to read as follows:

C.10:5-16 Practice and procedure.

15. When the director has issued a finding of probable cause, the case in support of the complaint shall be presented before the director by the attorney for the division and evidence concerning attempted conciliation shall not be received. The respondent shall file a written verified answer to the complaint and appear at such hearing in person or by representative, with or without counsel, and submit testimony. The complainant shall be allowed to intervene and present testimony in person and may be represented by counsel. The director or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The director shall not be bound by the strict rules of evidence prevailing in civil actions in courts of competent jurisdiction of this State. The testimony taken at the hearing shall be under oath and a verbatim record shall be made. When the director has issued a finding of probable cause in a housing discrimination complaint only, any party to that complaint may elect, in lieu of the administrative proceeding set forth in this section, to have the claim asserted in the finding of probable cause adjudicated in a civil action in Superior Court pursuant to section 12 of P.L.1945, c.169 (C.10:5-13). Such an election shall be made not later than 20 days after receipt of the finding of probable cause. Upon such election, the attorney for the division shall promptly file

such an action in Superior Court. Upon application to the court wherein the matter is pending, the complainant shall be permitted to intervene and present testimony in person and may be represented by counsel.

16. Section 16 of P.L.1945, c.169 (C.10:5-17) is amended to read as follows:

C.10:5-17 Findings and conclusions of director; order.

16. If, upon all evidence at the hearing, the director shall find that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in this act, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or unlawful discrimination and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and privileges to all persons, as, in the judgment of the director, will effectuate the purpose of this act, and including a requirement for report of the manner of compliance. If the conduct violative of this act constitutes any form of unlawful economic discrimination prohibited in section 11, subsections 1., m., and n. of this act, the affirmative action taken by the director may include the award of three-fold damages to the person or persons aggrieved by the violation. The director shall have the power to use reasonably certain bases, including but not limited to list, catalogue or market prices or values, or contract or advertised terms and conditions, in order to determine particulars or performance in giving appropriate remedy. In addition to any other remedies provided by P.L.1945, c.169 (C.10:5-1 et seq.), a prevailing complainant may recover damages to compensate for emotional distress caused by the activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et seq.) to the same extent as is available in common law tort actions. In any case in which the director, Attorney General, or appropriate organization is a complainant, on behalf of named or unnamed individuals or a class of individuals, any of the remedies or relief allowed by this act may be awarded or applied to the named or unnamed individual victims of discrimination. If, upon all evidence, the director shall find that the respondent has not engaged in any such unlawful practice or unlawful discrimination, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

17. Section 26 of P.L.1945, c.169 (C.10:5-27) is amended to read as follows:

C.10:5-27 Construction of act; other laws not affected; exception; other remedies.

26. The provisions of this act shall be construed fairly and justly with due regard to the interests of all parties. Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this State relating to discrimination because of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, disability, nationality or sex or liability for service in the Armed Forces of the United States; except that, as to practices and acts declared unlawful by section 11 of this act, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. Nothing herein contained shall bar, exclude or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from any unlawful employment practice or unlawful discrimination. With respect only to affectional or sexual orientation, nothing contained herein shall be construed to require the imposition of affirmative action, plans or quotas as specific relief from an unlawful employment practice or unlawful discrimination.

18. Section 1 of P.L.1971, c.130 (C.10:5-29) is amended to read as follows:

C.10:5-29 Person with a disability; accompaniment by service or guide dog; use of public facilities; liabilities.

1. Any person with a disability accompanied by a service or guide dog trained by a recognized training agency or school is entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities, subject only to the following conditions:

a. A person with a disability, if accompanied by a service or guide dog, shall keep such dog in his immediate custody at all times;

b. A person with a disability accompanied by a service or guide dog shall not be charged any extra fee or payment for admission to or use of any public facility;

c. A person with a disability who has a service or guide dog in his possession shall be liable for any damages done to the premises of a public facility by such dog.

d. (Deleted by amendment; P.L.1981, c. 391.)

19. Section 3 of P.L.1977, c.456 (C.10:5-29.1) is amended to read as follows:

C.10:5-29.1 Person with a disability; unlawful employment practice.

3. Unless it can be clearly shown that a person's disability would prevent such person from performing a particular job, it is an unlawful employment

practice to deny to an otherwise qualified person with a disability the opportunity to obtain or maintain employment, or to advance in position in his job, solely because such person is a person with a disability or because such person is accompanied by a service or guide dog.

20. Section 4 of P.L.1977, c.456 (C.10:5-29.2) is amended to read as follows:

C.10:5-29.2 Housing accommodations.

4. A person with a disability is entitled to rent, lease or purchase, as other members of the general public, all housing accommodations offered for rent, lease, or compensation in this State, subject to the rights, conditions and limitations established by law. Nothing in this section shall require any person renting, leasing or providing for compensation real property, to modify such property in any way to provide a higher degree of care for a person with a disability than for any other person. A person with a disability who has a service or guide dog, or who obtains a service or guide dog, shall be entitled to full and equal access to all housing accommodations and shall not be required to pay extra compensation for such service or guide dog, but shall be liable for any damages done to the premises by such dog. Any provision in any lease or rental agreement prohibiting maintenance of a pet or pets on or in the premises shall not be applicable to a service or guide dog owned by a tenant who is a person with a disability.

21. Section 5 of P.L.1977, c.456 (C.10:5-29.3) is amended to read as follows:

C.10:5-29.3 Service, guide dog trainer; access to public facilities; responsibilities.

5. A service or guide dog trainer, while engaged in the actual training process and activities of service dogs or guide dogs, shall have the same rights and privileges with respect to access to public facilities, and the same responsibilities as are applicable to a person with a disability.

22. Section 6 of P.L.1977, c.456 (C.10:5-29.4) is amended to read as follows:

C.10:5-29.4 Right-of-way for person accompanied by or instructing a guide dog.

6. A person with a disability accompanied by a guide dog, or a guide dog instructor engaged in instructing a guide dog, shall have the right-of-way over vehicles while crossing a highway or any intersection thereof, as provided in section 1 of P.L.1939, c.274 (C.39:4-37.1).

23. Section 9 of P.L.1980, c.46 (C.10:5-29.6) is amended to read as follows:

C.10:5-29.6 Rights and privileges relative to service dogs.

9. Whenever the law accords rights and privileges to or imposes conditions and restrictions upon blind persons with respect to their use of dogs to countervail their disability, and known and described as "seeing eye" dogs, those rights, privileges, conditions and restrictions shall also apply to persons with disabilities with respect to their use of dogs to countervail their disability, and known and described as either "service dogs" or "hearing ear" dogs.

24. Section 1 of P.L.1975, c.127 (C.10:5-31) is amended to read as follows:

C.10:5-31 Definitions.

1. As used in this act:

a. "Public works contract" means any contract to be performed for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration or repair of any building or public work or for the acquisition of materials, equipment, supplies or services with respect to which discrimination in the hiring of persons for the performance of work thereunder or under any subcontract thereunder by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, nationality, disability or sex is prohibited under R.S.10:2-1.

b. "Equal employment opportunity" means equality in opportunity for employment by any contractor, subcontractor or business firm engaged in the carrying out of a public works project including its development, design, acquisition, construction, management and operation.

25. Section 3 of P.L.1975, c.127 (C.10:5-33) is amended to read as follows:

C.10:5-33 Contents of bid specs, contract provisions.

3. The State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, shall include in the bid specifications and the contract provisions of any public works contract the following language:

"During the performance of this contract, the contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, disability, nationality or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, disability, nationality or sex. Such action shall include, but not be limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, disability, nationality or sex;

c. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment."

In soliciting bids for any public works contract the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, shall include in the advertisement and solicitation of bids the following language: "Bidders are required to comply with the requirements of P.L.1975, c.127."

26. Section 12 of P.L.1979, c.150 (C.27:25-12) is amended to read as follows:

C.27:25-12 Affirmative action programs.

a. The corporation shall formulate and abide by an affirmative-action program of equal opportunity whereby it will provide equal employment opportunity to rehabilitated offenders and members of minority groups qualified in all employment categories, including persons with disabilities, in accordance with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), except in the case of the mentally disabled, if it can be clearly shown that such disability would prevent such person from performing a particular job.

b. Contracts and subcontracts to be awarded by the corporation in connection with the construction, renovation or reconstruction of any structure or facility owned or used by the corporation shall contain appropriate provisions by which contractors and subcontractors or their assignees agree to afford an equal employment opportunity to all prospective employees and to all actual employees to be employed by the contractor or subcontractor in accordance

with an affirmative action program consonant with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

27. Section 2 of P.L.1994, c.176 (C.32:8-3.6) is amended to read as follows:

C.32:8-3.6 Equal opportunity employment; awarding of contracts.

2. a. The Delaware River Joint Toll Bridge Commission shall formulate and abide by an affirmative action program of equal opportunity whereby it will provide equal employment opportunity to members of minority groups qualified in all employment categories, including persons with disabilities, in accordance with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1) and the "Pennsylvania Human Relations Act," number 222 of the laws of Pennsylvania of 1955, except in the case of the mentally disabled, if it can be clearly shown that such disability would prevent such person from performing a particular job.

b. Contracts and subcontracts to be awarded by the commission in connection with the construction, renovation or reconstruction of any structure or facility owned or used by the commission shall contain appropriate provisions by which contractors and subcontractors or their assignees agree to afford an equal employment opportunity to all prospective employees and to all actual employees to be employed by the contractor or subcontractor in accordance with an affirmative action program consonant with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1) and the "Pennsylvania Human Relations Act," number 222 of the laws of Pennsylvania of 1955.

28. This act shall take effect on the first day of the fourth month following enactment.

Approved September 12, 2003.

CHAPTER 181

AN ACT concerning death benefits in the Police and Firemen's Retirement System and the State Police Retirement System and amending P.L. 1944, c.255 and P.L. 1965, c.89.

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

1. Section 1 of P.L.1944, c.255 (C.43:16A-1) is amended to read as follows:

C.43:16A-1 Definitions relative to Police and Firemen's Retirement System.

1. As used in this act:

(1) "Retirement system" or "system" shall mean the Police and Firemen's Retirement System of New Jersey as defined in section 2 of this act.

(2)(a) "Policeman" shall mean a permanent, full-time employee of a law enforcement unit as defined in section 2 of P.L.1961, c.56 (C.52:17B-67) or the State, other than an officer or trooper of the Division of State Police whose position is covered by the State Police Retirement System, whose primary duties include the investigation, apprehension or detention of persons suspected or convicted of violating the criminal laws of the State and who:

(i) is authorized to carry a firearm while engaged in the actual performance of his official duties;

(ii) has police powers;

(iii) is required to complete successfully the training requirements prescribed by P.L.1961, c.56 (C.52:17B-66 et seq.) or comparable training requirements as determined by the board of trustees; and

(iv) is subject to the physical and mental fitness requirements applicable to the position of municipal police officer established by an agency authorized to establish these requirements on a Statewide basis, or comparable physical and mental fitness requirements as determined by the board of trustees.

The term shall also include an administrative or supervisory employee of a law enforcement unit or the State whose duties include general or direct supervision of employees engaged in investigation, apprehension or detention activities or training responsibility for these employees and a requirement for engagement in investigation, apprehension or detention activities if necessary, and who is authorized to carry a firearm while in the actual performance of his official duties and has police powers.

(b) "Fireman" shall mean a permanent, full-time employee of a firefighting unit whose primary duties include the control and extinguishment of fires and who is subject to the training and physical and mental fitness requirements applicable to the position of municipal firefighter established by an agency authorized to establish these requirements on a Statewide basis, or comparable training and physical and mental fitness requirements as determined by the board of trustees. The term shall also include an administrative or supervisory employee of a firefighting unit whose duties include general or direct supervision of employees engaged in fire control and extinguishment activities or training responsibility for these employees and a requirement for engagement in fire control and extinguishment activities if necessary. As used in this paragraph, "firefighting unit" shall mean a municipal fire department, a fire district, or an agency of a county or the State which is responsible for control and extinguishment of fires.

(3) "Member" shall mean any policeman or fireman included in the membership of the retirement system pursuant to this amendatory and supplementary act, P.L. 1989, c.204 (C.43:16A-15.6 et al.).

(4) "Board of trustees" or "board" shall mean the board provided for in section 13 of this act.

(5) "Medical board" shall mean the board of physicians provided for in section 13 of this act.

(6) "Employer" shall mean the State of New Jersey, the county, municipality or political subdivision thereof which pays the particular policeman or fireman.

(7) "Service" shall mean service as a policeman or fireman paid for by an employer.

(8) "Creditable service" shall mean service rendered for which credit is allowed as provided under section 4 of this act.

(9) "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

(10) "Aggregate contributions" shall mean the sum of all the amounts, deducted from the compensation of a member or contributed by him or on his behalf, standing to the credit of his individual account in the annuity savings fund.

(11) "Annuity" shall mean payments for life derived from the aggregate contributions of a member.

(12) "Pension" shall mean payments for life derived from contributions by the employer.

(13) "Retirement allowance" shall mean the pension plus the annuity.

(14) "Earnable compensation" shall mean the full rate of the salary that would be payable to an employee if he worked the full normal working time for his position. In cases where salary includes maintenance, the retirement system shall fix the value of that part of the salary not paid in money which shall be considered under this act.

(15) "Average final compensation" shall mean the average annual salary upon which contributions are made for the three years of creditable service immediately preceding his retirement or death, or it shall mean the average annual salary for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or his beneficiary.

(16) "Retirement" shall mean the termination of the member's active service with a retirement allowance granted and paid under the provisions of this act.

(17) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(18) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(19) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(20) "Beneficiary" shall mean any person receiving a retirement allowance or other benefit as provided by this act.

(21) "Child" shall mean a deceased member's or retirant's unmarried child (a) under the age of 18, or (b) 18 years of age or older and enrolled in a secondary school, or (c) under the age of 24 and enrolled in a degree program in an institution of higher education for at least 12 credit hours in each semester, provided that the member died in active service as a result of an accident met in the actual performance of duty at some definite time and place, and the death was not the result of the member's willful misconduct, or (d) of any age who, at the time of the member's or retirant's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

(22) "Parent" shall mean the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

(23) "Widower" shall mean the man to whom a member or retirant was married on the date of her death and who has not remarried. In the event of the payment of accidental death benefits, pursuant to section 10 of P.L. 1944, c.255 (C.43:16A-10), the restriction concerning remarriage shall be waived.

(24) "Widow" shall mean the woman to whom a member or retirant was married on the date of his death and who has not remarried. In the event of the payment of accidental death benefits, pursuant to section 10 of P.L. 1944, c.255 (C.43:16A-10), the restriction concerning remarriage shall be waived.

(25) "Fiscal year" shall mean any year commencing with July 1, and ending with June 30, next following.

(26) "Compensation" shall mean the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday.

(27) "Department" shall mean any police or fire department of a municipality or a fire department of a fire district located in a township or a county police or park police department or the appropriate department of the State or instrumentality thereof.

(28) "Final compensation" means the compensation received by the member in the last 12 months of creditable service preceding his retirement or death.

(29) (Deleted by amendment, P.L.1992, c.78).

(30) (Deleted by amendment, P.L.1992, c.78).

2. Section 10 of P.L.1944, c.255 (C.43:16A-10) is amended to read as follows:

C.43:16A-10 Accidental death benefits.

10. (1) Upon the death of a member in active service as a result of an accident met in the actual performance of duty at some definite time and place, and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the retirement system within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

The provisions of this subsection shall also apply to a member who is a fireman and who dies as a result of an accident met in the actual performance of duty as a volunteer fireman in any municipality in the State, provided the member's death was not the result of the member's willful negligence.

(2) Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to his widow or widower a pension of 70% of the compensation, upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, for the use of herself or himself and the children of the deceased member; if there is no surviving widow or widower or in case the widow or widower dies, 20% of such compensation will be payable to one

surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation will be payable to such children in equal shares.

If there is no surviving widow, widower or child, 25% of the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, will be payable to one surviving dependent parent or 40% of such compensation will be payable to two surviving parents in equal shares.

In the event of accidental death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

(3) If there is no surviving widow, widower, child or dependent parent, there shall be paid to any other beneficiary of the deceased member, his aggregate contributions at the time of death.

(4) In no case shall the death benefit provided in subsection (2) be less than that provided under subsection (3).

(5) In addition to the foregoing benefits payable under subsection (2) or (3), there shall also be paid in one sum to such beneficiary, if living, as the member shall have nominated by written designation duly executed and filed with the retirement system, otherwise to the executor or administrator of the member's estate, an amount equal to 3 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service.

(6) In addition to the foregoing benefits, the State shall pay to the member's employer-sponsored health insurance program all health insurance premiums for the coverage of the member's surviving widow or widower and dependent children.

3. Section 3 of P.L.1965, c.89 (C.53:5A-3) is amended to read as follows:

C.53:5A-3 Definitions relative to State Police Retirement System.

3. As used in this act:

a. "Aggregate contributions" means the sum of all the amounts, deducted from the salary of a member or contributed by him or on his behalf, standing to the credit of his individual account in the Annuity Savings Fund. Interest credited on contributions to the former "State Police Retirement and Benevolent Fund" shall be included in a member's aggregate contributions.

b. "Annuity" means payments for life derived from the aggregate contributions of a member.

c. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, computed upon the basis of such mortality tables recommended by the actuary as the board of trustees adopts and regular interest.

- d. "Beneficiary" means any person entitled to receive any benefit pursuant to the provisions of this act by reason of the death of a member or retirant.
- e. "Board of trustees" or "board" means the board provided for in section 30 of this act.
- f. "Child" means a deceased member's or retirant's unmarried child either (a) under the age of 18 or (b) of any age who, at the time of the member's or retirant's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.
- g. "Creditable service" means service rendered for which credit is allowed on the basis of contributions made by the member or the State.
- h. "Parent" means the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.
- i. "Final compensation" means the average compensation received by the member in the last 12 months of creditable service preceding his retirement or death. Such term includes the value of the member's maintenance allowance for this same period.
- j. "Final salary" means the average salary received by the member in the last 12 months of creditable service preceding his retirement or death. Such term shall not include the value of the member's maintenance allowance.
- k. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.
- l. "Medical board" means the board of physicians provided for in section 30 of this act.
- m. "Member" means any full-time, commissioned officer, non-commissioned officer or trooper of the Division of State Police of the Department of Law and Public Safety of the State of New Jersey enrolled in the retirement system established by this act.
- n. "Pension" means payment for life derived from contributions by the State.
- o. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed on the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees and regular interest.
- p. "Regular interest" means interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the

market value of the assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

q. "Retirant" means any former member receiving a retirement allowance as provided by this act.

r. "Retirement allowance" means the pension plus the annuity.

s. "State Police Retirement System of New Jersey," herein also referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and of the benefits under the provisions of this act including the several funds placed under said system. By that name, all of its business shall be transacted, its funds invested, warrants for moneys drawn, and payments made and all of its cash and securities and other property held. All assets held in the name of the former "State Police Retirement and Benevolent Fund" shall be transferred to the retirement system established by this act.

t. "Surviving spouse" means the person to whom a member or a retirant was married on the date of the death of the member or retirant. The dependency of such a surviving spouse will be considered terminated by the marriage of the surviving spouse subsequent to the member's or the retirant's death, except that in the event of the payment of accidental death benefits, pursuant to section 14 of P.L.1965, c.89 (C.53:5A-14), the dependency of such a surviving spouse will not be considered terminated by the marriage of the surviving spouse subsequent to the member's death.

u. "Compensation" for purposes of computing pension contributions means the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the State for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday or shift.

4. Section 14 of P.L.1965, c.89 (C.53:5A-14) is amended to read as follows:

C.53:5A-14 Accidental death benefits; payment of health insurance premiums.

14. a. Upon the death of a member in active service as a result of an accident met in the actual performance of duty at some definite time and place, and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the Division of State Police within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant

such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

b. (1) Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to the surviving spouse a pension of 70% of final compensation or of adjusted final compensation, as appropriate, for the use of that spouse and children of the deceased, to continue for as long as the person qualifies as a "surviving spouse" for the purposes of this act. If there is no surviving spouse or in case the spouse dies, 20% of final compensation or of adjusted final compensation, as the case may be, will be payable to one surviving child, 35% of final compensation or of adjusted final compensation, as the case may be, to two surviving children in equal shares and if there be three or more children, 50% of final compensation or of adjusted final compensation, as the case may be, will be payable to such children in equal shares.

If there is no surviving spouse or child, 25% of final compensation will be payable to one surviving parent or 40% of final compensation will be payable to two surviving parents in equal shares.

As used in this paragraph, "adjusted final compensation" means the amount of final compensation or final compensation as adjusted, as the case may be, increased by the same percentage increase which is applied in any adjustments of the compensation schedule of active members after the member's death and before the date on which the deceased member of the retirement system would have accrued 25 years of service under an assumption of continuous service, at which time the amount resulting from such increases shall become fixed and shall be the basis for adjustments pursuant to the Pension Adjustment Act, P.L.1958, c.143 (C.43:3B-1 et seq.). Any adjustments to final compensation or adjusted final compensation shall take effect at the same time as any adjustments in the compensation schedule of active members. The provisions of the Pension Adjustment Act shall not apply to any pension based upon adjusted final compensation other than the fixed pension in effect at the conclusion of the 25-year period.

(2) In the event of accidental death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

c. If there is no surviving spouse, child or parent, there shall be paid to any other beneficiary of the deceased member, his aggregate contributions at the time of death.

d. In no case shall the death benefits provided in subsection b. be less than that provided under subsection c.

e. In addition to the foregoing benefits payable under subsection a. or b., there shall also be paid in one sum to the member's beneficiary, an amount equal to 3 1/2 times final compensation.

- f. (Deleted by amendment.)
 - g. (Deleted by amendment.)
 - h. In addition to the foregoing benefits, the State shall pay to the member's employer-sponsored health insurance program all health insurance premiums for the coverage of the member's surviving spouse and surviving children.
5. This act shall take effect immediately.

Approved September 12, 2003.

CHAPTER 182

AN ACT concerning the promotion of the film industry and amending and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).

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

C.34:1B-178 Short title.

1. Sections 1 through 7 of this act shall be known and may be cited as the "New Jersey Film Production Assistance Act."

C.34:1B-179 Findings, declarations relative to film production assistance.

2. The Legislature finds and declares that:
- a. The film industry spent over \$69 million in this State in the year 2000 on a record 664 different projects including 88 feature films;
 - b. The creation of additional incentives to attract film companies to this State will make substantial contributions to the State's continued economic growth and development;
 - c. In order to attract greater investment by film companies in this State, it is important to establish a film production assistance program with sufficient incentives to encourage new film projects and investment in this State.

C.34:1B-180 Definitions relative to film production assistance.

3. As used in this act:
- "Above-the-line expenses" means the major expenses committed to a film project before production begins and may include storywriting, salaries for the producer, director, and cast, travel and living, and production fees if the film project is bought from another film production company.
- "Act" means the New Jersey Film Production Assistance Act.
- "Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Below-the-line expenses" means all physical production costs not included in the above-the-line expenses of a film project and may include material costs, music rights, publicity, or advertisements.

"Film production company" or "company" means a person engaged in the business of making motion picture or television images for theatrical, commercial or educational purposes.

"Film project" means a single media or multimedia program produced by a film production company including, but not limited to, motion pictures, feature films, shorts and documentaries, television films or episodes or similar programs fixed on film, videotape, computer disk, laser disk or other similar means that is intended for exhibition in theaters, by television stations or by other means for the home viewing market but does not include any film production that is produced by or on behalf of a corporation or other person for its own internal use for advertising, educational, training or similar purposes. "Film project" shall not mean a single media or multimedia program produced by a film production company if records, as required under 18 U.S.C. s.2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program.

"Financial assistance" means a loan guarantee.

"Program" means the "New Jersey Film Production Assistance Program" established in the authority pursuant to section 4 of P.L.2003, c.180 (C.34:1B-181).

C.34:1B-181 New Jersey Film Production Assistance Program.

4. a. There is created in the authority the New Jersey Film Production Assistance Program. The purpose of the program shall be to attract film production companies with financial assistance from the authority in order to promote and encourage the development of film projects and investments by film production companies in this State.

b. The authority shall adopt eligibility criteria for providing financial assistance to film production companies. These criteria shall limit financial assistance to film production companies that:

(1) want to engage in film projects where more than 70 percent of the shooting days take place in this State and where at least 50 percent of the amount of the below-the-line expenses of the operating budget of the film project is spent in this State;

(2) have obtained a minimum of one-half of the estimated total production costs from other sources;

(3) provide in their employment contracts that not less than the prevailing wage rate, as determined by the Commissioner of Labor, pursuant to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), shall be paid to workers employed in the performance

of contracts in connection with a proposed project, including construction, reconstruction, rehabilitation or demolition of property and improvements thereon; and

(4) have posted such financial security as may be deemed to be necessary by the authority.

c. The authority shall provide financial assistance to eligible film production companies to facilitate their film projects in New Jersey. In order to be eligible for the financial assistance, film production companies shall, in addition to meeting the authority's customary underwriting criteria, demonstrate to the authority's satisfaction that they meet the eligibility criteria adopted pursuant to subsection b. of this section. If at any time the authority determines that a film production company does not meet such criteria, any financial assistance provided shall be withdrawn or any financial assistance to be provided shall be rendered null and void, as appropriate.

d. The authority shall utilize the program to stimulate greater investment in this State by film production companies through measures that include, but are not limited to:

(1) identifying low-interest loans or tax credits that may be available from the State or from federal government agencies or private organizations to promote the planning and development of film projects in this State; and

(2) in consultation with the Department of the Treasury, identifying existing surplus State property that could be utilized by film production companies for film projects.

C.34:1B-182 Establishment, maintenance of program; funding; use.

5. a. To implement this act, the authority shall establish and maintain the program with moneys to be used by the authority for the purposes specified in this act. Moneys to be utilized by the program shall include, but not be limited to:

(1) any moneys that shall be received by the authority from the repayment of the moneys in the account used to provide financial assistance to film production companies pursuant to P.L.2003, c.182 (C.34:1B-178 et al.);

(2) any moneys that shall be received by the authority from other business assistance programs administered by the authority which it determines to deposit therein; and

(3) any other source that the authority may determine is available to effectuate the purposes of the program.

b. The authority shall use the moneys available for the program to:

(1) provide, for a period of five years after the effective date of this act, financial assistance to film production companies deemed eligible pursuant to section 4 of P.L.2003, c.182 (C.34:1B-181); and

(2) defray the administrative expenses of carrying out the purposes and provisions of P.L.2003, c.182 (C.34:1B-178 et al.). Such administrative expenses may be used by the authority to employ an administrator and additional personnel or consultants to oversee the operations of the program and to prepare any reports or other documentation regarding the program with the assistance of the authority. Such administrator, additional personnel or consultants shall review each application for financial assistance for the purpose of assisting the authority in an investigation and analysis of the financial soundness of the film project or film production company.

Within 30 days of the end of the five-year period as provided in paragraph (1) of subsection b. of this section, the authority shall determine whether sufficient interest in financial assistance from qualified film production companies warrants the continuation of the program and the authority may discontinue the program at the end of such period if the authority determines that such interest is not evident. The authority shall notify the Governor and Legislature of its decision and issue a report of its findings and any suggestions for improvement to the program if such suggestions are warranted.

c. The maximum amount of any loan that is guaranteed by the authority and is to be provided to a film production company, pursuant to P.L.2003, c.182 (C.34:1B-178 et al.), shall not exceed either \$1,500,000 per film project, or an amount that is no greater than 30 percent of any loan for the film project that is derived from private sources, whichever amount is less. The authority shall not have a balance outstanding of all loans guaranteed pursuant to P.L.2003, c.182 (C.34:1B-178 et al.) of an amount greater than \$10 million at any time, except that the authority may increase this amount if the authority determines that the demand for financial assistance warrants such increase.

d. The authority shall provide in any agreement between the authority and a film production company for financial assistance from the program that the authority shall retain a security interest in the assets of the film production company including, but not limited to, all revenues, payments, money and proceeds generated by the company's film project, to the extent necessary to insure the authority's full recovery of the amount of any financial assistance. Prior to the granting of any financial assistance, the authority shall require the film production company to enter into a faithful performance bond, completion bond or similar security with the authority in such form, amount and terms as shall be determined by the authority.

C.34:1B-183 Report to Governor, Legislature.

6. Within two years of the effective date of P.L.2003, c.182 (C.34:1B-178 et al.), the authority shall submit a written report to the Governor and the Legislature describing the status of the program, the demand for the program, the total amount of financial assistance awarded by the authority from the

program and an assessment of the success of the program in meeting the goals of this act and any recommendations for improving the operation and effectiveness of the program.

C.34:1B-184 Rules, regulations.

7. The authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to effectuate the purposes of this act.

8. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

C.34:1B-5 Powers.

5. The authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project or school facilities project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project to municipalities receiving State aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project or the school facilities project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project and any project financed pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

g. To sell, convey or lease to any person all or any portion of a project or school facilities project, for such consideration and upon such terms as the authority may determine to be reasonable;

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, school facilities project or revenues, whenever it shall find such action to be in furtherance of the purposes of this act, P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

i. To grant options to purchase or renew a lease for any of its projects or school facilities projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) with the terms and conditions thereof;

k. In connection with any application for assistance under P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.) or the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) or commitments therefor, to require and collect such fees and charges as the authority shall determine to be reasonable;

l. To adopt, amend and repeal regulations to carry out the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and to fix and pay their compensation from funds available to the authority therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration,

equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To undertake school facilities projects and to enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the authority to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L.2000, c.72 (C.18A:7G-1 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

aa. To enter into leases, rentals or other disposition of a real property interest in and of any school facilities project to or from any local unit pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.);

bb. To make and contract to make loans or leases and to make grants to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans or leases, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance

contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing, construction and placing into service and maintenance of school facilities projects;

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or rescheduled debt of the particular county or public authority for the duration of the loan; except that, whenever the solid waste facility bonds to be refinanced were issued by a public authority and the county solid waste facility was utilized as a regional county solid waste facility, as designated in the respective adopted district solid waste management plans of the participating counties as approved by the department prior to November 10, 1997, and the utilization of the facility was established pursuant to tonnage obligations set forth in their respective interdistrict agreements, the public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of a percentage of the aggregate debt service for the refunded or rescheduled debt of the public authority not to exceed the percentage of the specified tonnage obligation of the host county for the duration of the loan. Whenever the solid waste facility bonds are the obligation of a public authority, the relevant county shall execute a deficiency agreement with the authority, which shall provide that the county pledges to cover any shortfall and to pay deficiencies in scheduled repayment obligations of the public authority. All costs associated with the issuance of bonds pursuant to this subsection may be paid by the authority from the proceeds of these bonds. Any county or public authority is hereby authorized to enter into any agreement with the authority necessary, desirable or convenient to effectuate the provisions of this subsection.

The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31,

2002. The authority may refund its own bonds issued for the purposes herein at any time;

ff. To pool loans for any local government units that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units;

gg. To finance projects approved by the board, provide staff support to the board, oversee and monitor progress on the part of the board in carrying out the revitalization, economic development and restoration projects authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities pursuant thereto; and

hh. To offer financial assistance to qualified film production companies as provided in the "New Jersey Film Production Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.).

9. This act shall take effect immediately.

Approved September 15, 2003.

CHAPTER 183

AN ACT concerning DNA testing, amending and supplementing P.L.1994, c.136 and amending R.S.39:5-41.

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

1. Section 2 of P.L.1994, c.136 (C.53:1-20.18) is amended to read as follows:

C.53:1-20.18 Findings, declarations regarding DNA databanks.

2. The Legislature finds and declares that DNA databanks are an important tool in criminal investigations and in deterring and detecting recidivist acts. It is the policy of this State to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals who are the subjects of criminal investigations. It is therefore in the best interest of the State of New Jersey to establish a DNA database and a DNA databank containing blood or other biological samples submitted by every person convicted or found not guilty by reason of insanity of a crime. It is also in the best interest of the State of New Jersey to include in this DNA database

and DNA databank blood or other biological samples submitted by juveniles adjudicated delinquent or adjudicated not delinquent by reason of insanity for acts, which if committed by an adult, would constitute a crime.

2. Section 3 of P.L.1994, c.136 (C.53:1-20.19) is amended to read as follows:

C.53:1-20.19 Definitions regarding DNA databanks.

3. As used in this act:

"CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic laboratories.

"DNA" means deoxyribonucleic acid.

"DNA Record" means DNA identification information stored in the State DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.

"DNA Sample" means a blood or other biological sample provided by any person convicted of any offense enumerated in section 4 of P.L.1994, c.136 (C.53:1-20.20) or provided by any juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute any offense enumerated in section 4 of P.L.1994, c.136 (C.53:1-20.20) or submitted to the division for analysis pursuant to a criminal investigation.

"Division" means the Division of State Police in the Department of Law and Public Safety.

"FBI" means the Federal Bureau of Investigation.

"State DNA Database" means the DNA identification record system to be administered by the division which provides DNA records to the FBI for storage and maintenance in CODIS.

"State DNA Databank" means the repository of DNA samples collected under the provisions of this act.

3. Section 4 of P.L.1994, c.136 (C.53:1-20.20) is amended to read as follows:

C.53:1-20.20 DNA samples required; conditions.

4. a. On or after January 1, 1995 every person convicted of aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact and criminal sexual contact under N.J.S.2C:14-3 or any attempt to commit any of these crimes and who is sentenced to a term of imprisonment shall have a blood sample drawn or other biological sample collected for purposes of DNA testing upon commencement of the period of confinement.

In addition, every person convicted on or after January 1, 1995 of these offenses, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted and incarcerated as a result of a conviction of one or more of these offenses prior to January 1, 1995 shall provide a DNA sample before parole or release from incarceration.

b. On or after January 1, 1998 every juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual contact under N.J.S.2C:14-3, or any attempt to commit any of these crimes, shall have a blood sample drawn or other biological sample collected for purposes of DNA testing.

c. On or after January 1, 1998 every person found not guilty by reason of insanity of aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual contact under N.J.S.2C:14-3, or any attempt to commit any of these crimes, or adjudicated not delinquent by reason of insanity for an act which, if committed by an adult, would constitute one of these crimes, shall have a blood sample drawn or other biological sample collected for purposes of DNA testing.

d. On or after January 1, 2000 every person convicted of murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the second degree pursuant to paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.2C:24-4, or any attempt to commit any of these crimes and who is sentenced to a term of imprisonment shall have a blood sample drawn or other biological sample collected for purposes of DNA testing upon commencement of the period of confinement.

In addition, every person convicted on or after January 1, 2000 of these offenses, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted and incarcerated as a result of a conviction of one or more of these offenses prior to January 1, 2000 shall provide a DNA sample before parole or release from incarceration.

e. On or after January 1, 2000 every juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the second degree pursuant to paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.2C:24-4,

or any attempt to commit any of these crimes, shall have a blood sample drawn or other biological sample collected for purposes of DNA testing.

f. On or after January 1, 2000 every person found not guilty by reason of insanity of murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the second degree pursuant to paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.2C:24-4, or any attempt to commit any of these crimes, or adjudicated not delinquent by reason of insanity for an act which, if committed by an adult, would constitute one of these crimes, shall have a blood sample drawn or other biological sample collected for purposes of DNA testing.

g. Every person convicted or found not guilty by reason of insanity of a crime shall have a blood sample drawn or other biological sample collected for purposes of DNA testing. If the person is sentenced to a term of imprisonment or confinement, the person shall have a blood sample drawn or other biological sample collected for purposes of DNA testing upon commencement of the period of imprisonment or confinement. If the person is not sentenced to a term of imprisonment or confinement, the person shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted or found not guilty by reason of insanity of a crime prior to the effective date of P.L.2003, c.183 and who, on the effective date, is serving a sentence of imprisonment, probation, parole or other form of supervision as a result of the crime or is confined following acquittal by reason of insanity shall provide a DNA sample before termination of imprisonment, probation, parole, supervision or confinement, as the case may be.

h. Every juvenile adjudicated delinquent, or adjudicated not delinquent by reason of insanity, for an act which, if committed by an adult, would constitute a crime shall have a blood sample drawn or other biological sample collected for purposes of DNA testing. If under the order of disposition the juvenile is sentenced to some form of imprisonment, detention or confinement, the juvenile shall have a blood sample drawn or other biological sample collected for purposes of DNA testing upon commencement of the period of imprisonment, detention or confinement. If the order of disposition does not include some form of imprisonment, detention or confinement, the juvenile shall provide a DNA sample as a condition of the disposition ordered by the court. A juvenile who, prior to the effective date of P.L.2003, c.183, has been adjudicated delinquent, or adjudicated not delinquent by reason of insanity for an act which, if committed by an adult, would constitute a crime and who on the effective date is under some form of imprisonment, detention, confinement, probation, parole or any other form of supervision as a result

of the offense or is confined following an adjudication of not delinquent by reason of insanity shall provide a DNA sample before termination of imprisonment, detention, supervision or confinement, as the case may be.

i. Nothing in this act shall be deemed to limit or preclude collection of DNA samples as authorized by court order or in accordance with any other law.

4. Section 5 of P.L.1994, c.136 (C.53:1-20.21) is amended to read as follows:

C.53:1-20.21 Purposes of DNA samples.

5. Tests shall be performed on each blood or other biological sample submitted pursuant to section 4 of P.L.1994, c.136 (C.53:1-20.20) in order to analyze and type the genetic markers contained in or derived from the DNA. Except insofar as the use of the results of these tests for such purposes would jeopardize or result in the loss of federal funding, the results of these tests shall be used for the following purposes:

- a. For law enforcement identification purposes;
- b. For development of a population database;
- c. To support identification research and protocol development of forensic DNA analysis methods;
- d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes;
- e. For research, administrative and quality control purposes;
- f. For judicial proceedings, by order of the court, if otherwise admissible pursuant to applicable statutes or rules;
- g. For criminal defense purposes, on behalf of a defendant, who shall have access to relevant samples and analyses performed in connection with the case in which the defendant is charged; and
- h. For such other purposes as may be required under federal law as a condition for obtaining federal funding.

The DNA record of identification characteristics resulting from the DNA testing conducted pursuant to this section shall be stored and maintained in the State DNA database and forwarded to the FBI for inclusion in CODIS. The DNA sample itself will be stored and maintained in the State DNA databank.

5. Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended to read as follows:

C.53:1-20.22 Drawing of DNA samples; conditions.

6. Each blood sample required to be drawn or biological sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-20.20) from persons who

are incarcerated shall be drawn or collected at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn or collected at a prison or jail unit to be specified by the sentencing court. DNA samples from persons who are adjudicated delinquent shall be drawn or collected at a prison or jail identification and classification bureau specified by the family court. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory or medical technician, phlebotomist or other health care worker with phlebotomy training shall draw any blood sample to be submitted for analysis, and only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory or medical technician or person who has received biological sample collection training in accordance with protocols adopted by the Attorney General, in consultation with the Department of Corrections, shall collect or supervise the collection of any other biological sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood or collect a biological sample by this section as a result of drawing blood or collecting the sample from any person if the blood was drawn or sample collected according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing or collecting of any DNA sample. No sample shall be drawn or collected pursuant to section 4 of P.L. 1994, c.136 (C.53:1-20.20) if the division has previously received a blood or biological sample from the convicted person or the juvenile adjudicated delinquent which was adequate for successful analysis and identification.

6. R.S.39:5-41 is amended to read as follows:

Fines, penalties; forfeitures, disposition of; exceptions.

39:5-41. a. All fines, penalties and forfeitures imposed and collected under authority of law for any violations of R.S.39:4-63 and R.S.39:4-64 shall be forwarded by the judge to whom the same have been paid to the proper financial officer of a county, if the violation occurred within the jurisdiction of that county's central municipal court, established pursuant to N.J.S.2B:12-1 et seq. or the municipality wherein the violation occurred, to be used by the county or municipality to help finance litter control activities in addition to or supplementing existing litter pickup and removal activities in the municipality.

b. Except as otherwise provided by subsection a. of this section, all fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, other than those violations in which the complaining witness is the director, a member of his staff, a member of the State Police, a member of a county police department and force or a county park police system in a county that has established a central municipal court, an inspector of the Board of Public Utilities, or a law enforcement officer

of any other State agency, shall be forwarded by the judge to whom the same have been paid as follows: one-half of the total amount collected to the financial officer, as designated by the local governing body, of the respective municipalities wherein the violations occurred, to be used by the municipality for general municipal use and to defray the cost of operating the municipal court; and one-half of the total amount collected to the proper financial officer of the county wherein they were collected, to be used by the county as a fund for the construction, reconstruction, maintenance and repair of roads and bridges, snow removal, the acquisition and purchase of rights-of-way, and the purchase, replacement and repair of equipment for use on said roads and bridges therein. Up to 25% of the money received by a municipality pursuant to this subsection, but not more than the actual amount budgeted for the municipal court, whichever is less, may be used to upgrade case processing.

All fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, in which the complaining witness is a member of a county police department and force or a county park police system in a county that has established a central municipal court, shall be forwarded by the judge to whom the same have been paid to the financial officer, designated by the governing body of the county, for all violations occurring within the jurisdiction of that court, to be used for general county use and to defray the cost of operating the central municipal court.

Whenever any county has deposited moneys collected pursuant to this section in a special trust fund in lieu of expending the same for the purposes authorized by this section, it may withdraw from said special trust fund in any year an amount which is not in excess of the amount expended by the county over the immediately preceding three-year period from general county revenues for said purposes. Such moneys withdrawn from the trust fund shall be accounted for and used as are other general county revenues.

c. (Deleted by amendment, P.L.1993, c.293.)

d. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. In addition, upon the forfeiture of bail, \$1 of that forfeiture shall be forwarded to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Body Armor Replacement" fund established pursuant to section 1 of P.L.1997, c.177 (C.52:17B-4.4). Beginning in the fiscal year next following the effective date of this act, the State Treasurer annually shall allocate from those moneys so forwarded an amount not to exceed \$400,000 to the Department of Personnel to be expended exclusively for the purposes of funding the operation of the "Law Enforcement Officer

Crisis Intervention Services" telephone hotline established and maintained under the provisions of P.L.1998, c.149 (C.11A:2-25 et al.).

e. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Spinal Cord Research Fund" established pursuant to section 9 of P.L.1999, c.201 (C.52:9E-9). In order to comply with the provisions of Article VIII, Section II, paragraph 5 of the State Constitution, a municipal or county agency which forwards moneys to the State Treasurer pursuant to this subsection may retain an amount equal to 2% of the moneys which it collects pursuant to this subsection as compensation for its administrative costs associated with implementing the provisions of this subsection.

f. Notwithstanding the provisions of subsections a. and b. of this section, during the period beginning on the effective date of this act and ending five years thereafter, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Autism Medical Research and Treatment Fund" established pursuant to section 1 of P.L.2003, c.144 (C.30:6D-62.2).

g. Notwithstanding the provisions of subsections a. and b. of this section, \$2 shall be added to the amount of each fine and penalty imposed and collected by a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Forensic DNA Laboratory Fund" established pursuant to P.L.2003, c.183. Prior to depositing the moneys into the fund, the State Treasurer shall forward to the Administrative Office of the Courts an amount not to exceed \$475,000 from moneys initially collected pursuant to this subsection to be used exclusively to establish a collection mechanism and to provide funding to update the Automated Traffic System Fund created pursuant to N.J.S.2B:12-30 to implement the provisions of this subsection.

The authority to impose additional fines and penalties under this subsection shall take effect 90 days after the effective date of P.L.2003, c.183 and shall expire five years thereafter. Not later than the 180th day prior to such expiration,

the Attorney General shall prepare and submit to the Governor and the Legislature a report on the collection and use of DNA samples under P.L. 1994, c. 136. The report shall cover the period beginning on that effective date and ending four years thereafter. The report shall indicate separately, for each one-year period during those four years that begins on that effective date or an anniversary thereof, the number of each type of biological sample taken and the total cost of taking that type of sample, and also the number of identifications and exonerations achieved through the use of the samples. In addition, the report shall evaluate the effectiveness, including cost effectiveness, of having the samples available to further police investigations and other forensic purposes.

C.53:1-20.28a "New Jersey Forensic DNA Laboratory Fund."

7. a. There is created in the Division of State Police in the Department of Law and Public Safety a separate special account to be known as the "New Jersey Forensic DNA Laboratory Fund." All moneys paid to the Division of State Police pursuant to subsection g. of R.S.39:5-41 shall be deposited in the fund.

b. Moneys in the "New Jersey Forensic DNA Laboratory Fund" shall be used for the expenses of DNA laboratories, criminalistics and other forensic applications.

8. This act shall take effect immediately.

Approved September 22, 2003.

CHAPTER 184

AN ACT concerning theft of identity, amending N.J.S.2C:1-3, P.L. 1983, c.565, N.J.S.2C:21-17, N.J.S.2C:44-1, P.L. 1997, c.172 and supplementing Title 2C of the New Jersey Statutes.

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

1. N.J.S.2C:1-3 is amended to read as follows:

Territorial applicability.

2C:1-3. Territorial applicability.

a. Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(1) Either the conduct which is an element of the offense or the result which is such an element occurs within this State;

(2) Conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit a crime within the State;

(3) Conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State;

(4) Conduct occurring within the State establishes complicity in the commission of, or an attempt, or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State;

(5) The offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(6) The offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

b. Subsection a.(1) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

c. Except as provided in subsection g., subsection a. (1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the State which would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the State.

d. When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result," within the meaning of subsection a.(1) and if the body of a homicide victim is found within the State, it may be inferred that such result occurred within the State.

e. This State includes the land and water, including the waters set forth in N.J.S.40A:13-2 and the air space above such land and water with respect to which the State has legislative jurisdiction. It also includes any territory made subject to the criminal jurisdiction of this State by compacts between it and another state or between it and the Federal Government.

f. Notwithstanding that territorial jurisdiction may be found under this section, the court may dismiss, hold in abeyance for up to six months, or, with the permission of the defendant, place on the inactive list a criminal prosecution under the law of this State where it appears that such action is in the interests of justice because the defendant is being prosecuted for an offense based on

the same conduct in another jurisdiction and this State's interest will be adequately served by a prosecution in the other jurisdiction.

g. When the result which is an element of an offense consists of inflicting a harm upon a resident of this State or depriving a resident of this State of a benefit, the result occurs within this State, even if the conduct occurs wholly outside this State and any property that was affected by the offense was located outside this State.

2. Section 1 of P.L.1983, c.565 (C.2C:21-2.1) is amended to read as follows:

C.2C:21-2.1 Offenses involving false government documents, degree of crime.

1. a. A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

b. A person who knowingly makes, or possesses devices or materials to make, a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

c. A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the third degree. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this subsection if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

d. A person who knowingly possesses a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the fourth degree.

e. In addition to any other disposition authorized by this Title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute

indicating the dispositions that may be ordered for an adjudication of delinquency, and, notwithstanding the provisions of subsection c. of N.J.S.2C:43-2, every person convicted of or adjudicated delinquent for a violation of any offense defined in this section shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of the sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement.

The court before whom any person is convicted of or adjudicated delinquent for a violation of any offense defined in this section shall collect forthwith the New Jersey driver's license or licenses of that person and forward the license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. The report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license, but shall notify forthwith the director who shall notify the appropriate officials in that licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privileges in this State.

In addition to any other condition imposed, a court, in its discretion, may suspend, revoke or postpone the driving privileges of a person admitted to supervisory treatment under N.J.S.2C:36A-1 or N.J.S.2C:43-12 without a plea of guilty or finding of guilt.

3. N.J.S.2C:21-17 is amended to read as follows:

Impersonation; theft of identity; crime.

2C:21-17. Impersonation; Theft of Identity; crime.

a. A person is guilty of an offense if the person:

(1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for purpose of obtaining a benefit for himself or another or to injure or defraud another;

(2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

(3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services; or

(4) Obtains any personal identifying information pertaining to another person and uses that information, or assists another person in using the information, in order to assume the identity of or represent themselves as another person, without that person's authorization and with the purpose to fraudulently obtain or attempt to obtain a benefit or services, or avoid the payment of debt or other legal obligation or avoid prosecution for a crime by using the name of the other person.

As used in this section:

"Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.

b. A person is guilty of an offense if, in the course of making an oral or written application for services, the person impersonates another, assumes a false identity or makes a false or misleading statement with the purpose of avoiding payment for prior services. Purpose to avoid payment for prior services may be presumed upon proof that the person has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making oral or written application for services.

c. (1) If the actor obtains a benefit or deprives another of a benefit in an amount less than \$500 and the offense involves the identity of one victim, the actor shall be guilty of a crime of the fourth degree.

(2) For a second or subsequent offense, or if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two but less than five victims, the actor shall be guilty of a crime of the third degree.

(3) If the actor obtains a benefit or deprives another of a benefit in the amount of \$75,000 or more, or the offense involves the identity of more than five victims, the actor shall be guilty of a crime of the second degree.

d. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

e. The sentencing court shall issue such orders as are necessary to correct any public record that contains false information as a result of a theft of identity. The sentencing court may provide restitution to the victim in accordance with the provisions of section 4 of P.L.2002, c.85 (C.2C:21-17.1).

4. N.J.S.2C:44-1 is amended to read as follows:

Criteria for withholding or imposing sentence of imprisonment.

2C:44-1. Criteria for Withholding or Imposing Sentence of Imprisonment.

a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

(3) The risk that the defendant will commit another offense;

(4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30, or the defendant took advantage of a position of trust or confidence to commit the offense;

(5) There is a substantial likelihood that the defendant is involved in organized criminal activity;

(6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted;

(7) The defendant committed the offense pursuant to an agreement that he either pay or be paid for the commission of the offense and the pecuniary incentive was beyond that inherent in the offense itself;

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager;

(9) The need for deterring the defendant and others from violating the law;

(10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;

(11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled; and

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

(1) The defendant's conduct neither caused nor threatened serious harm;

(2) The defendant did not contemplate that his conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or facilitated its commission;

(6) The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service;

(7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(8) The defendant's conduct was the result of circumstances unlikely to recur;

(9) The character and attitude of the defendant indicate that he is unlikely to commit another offense;

(10) The defendant is particularly likely to respond affirmatively to probationary treatment;

(11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents;

(12) The willingness of the defendant to cooperate with law enforcement authorities;

(13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant.

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection

a., except that this subsection shall not apply if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L. 1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture or possession of an item containing personal identifying information in violation of subsection b. of section 6 of P.L. 2003, c.184 (C.2C:21-17.3); or if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L. 1997, c.111 (C.2C:11-5.1 or 2C:12-1.1).

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b., weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnaping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in paragraph (a) of this subsection to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

(d) To a term of four years for a crime of the third degree; and

(e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which he was convicted. If the court does impose sentence pursuant to this paragraph, or if the court imposes a noncustodial or probationary sentence upon conviction for a crime of the first or second degree, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph a.(2) or a.(12) and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L. 1993, c. 123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

C.2C:21-17.2 Use of personal identifying information of another, certain; second degree crime.

5. a. A person is guilty of a crime of the second degree if, in obtaining or attempting to obtain a driver's license or other document issued by a governmental agency which could be used as a means of verifying a person's identity, age or any other personal identifying information, that person knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency or which belongs or pertains to a person other than the person who possesses the document.

b. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense.

c. A violation of R.S.33:1-81 or section 6 of P.L. 1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

C.2C:21-17.3 Trafficking in personal identifying information pertaining to another person, certain; crime degrees; terms defined.

6. a. A person who knowingly distributes, manufactures or possesses any item containing personal identifying information pertaining to another person, without that person's authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone is guilty of a crime of the fourth degree.

b. (1) If the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons, without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone the person is guilty of a crime of the third degree.

(2) If the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone the person is guilty of a crime of the second degree.

c. Distribution, manufacture or possession of 20 or more items containing personal identifying information pertaining to another person or of items containing personal identifying information pertaining to five or more separate persons without authorization shall create an inference that the items were distributed, manufactured or possessed with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

d. As used in this section:

"Distribute" means, but is not limited to, any sale, purchase, transfer, gift, delivery, or provision to another, regardless of whether the distribution was for compensation.

"Item" means a writing or document, whether issued by a governmental agency or made by any business or person, recorded by any method that contains personal identifying information. Item includes, but is not limited to, an access device, book, check, paper, card, instrument, or information stored in electronic form by way of e-mail or otherwise, on any computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network or any part thereof, or by other mechanical or electronic device such as cellular telephone, pager or other electronic device capable of storing information.

C.2C:21-17.4 Action by person defrauded by unauthorized use of personal identifying information.

7. a. Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use of that person's personal identifying

information, in violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17, may bring an action in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award damages in an amount three times the value of all costs incurred by the victim as a result of the person's criminal activity. These costs may include, but are not limited to, those incurred by the victim in clearing his credit history or credit rating, or those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant. The victim may also recover those costs incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to damages, but damages to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

b. The standard of proof in actions brought under this section is a preponderance of the evidence, and the fact that a prosecution for a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 is not instituted or, where instituted, terminates without a conviction shall not preclude an action pursuant to this section. A final judgment rendered in favor of the State in any criminal proceeding shall estop the defendant from denying the same conduct in any civil action brought pursuant to this section.

c. The cause of action authorized by this section shall be in addition to and not in lieu of any forfeiture or any other action, injunctive relief or any other remedy available at law, except that where the defendant is convicted of a violation of this act, the court in the criminal action, upon the application of the Attorney General or the prosecutor, shall in addition to any other disposition authorized by this Title sentence the defendant to pay restitution in an amount equal to the costs incurred by the victim as a result of the defendant's criminal activity, regardless of whether a civil action has been instituted. These costs may include, but are not limited to those incurred by the victim in clearing his credit history or credit rating; those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant; or those incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to restitution, but restitution to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

C.2C:21-17.5 Deletion of certain items from victim's consumer reporting files.

8. a. On motion of a person who has been the victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 or on its own motion, the court may, without a hearing, grant an order directing all consumer reporting agencies doing business within the State of New Jersey to delete those items of information from the victim's file that were the result of the unlawful use of the victim's personal identifying information. The consumer reporting agency shall thereafter, provide the victim with a copy of the corrected credit history report at no charge.

b. Following any deletion of information pursuant to this section, the consumer reporting agency shall, at the request of the victim, furnish notification that the item has been deleted, to any person specifically designated by the victim who has within two years prior thereto received a consumer report for employment purposes, or within one year prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

9. Section 10 of P.L.1997, c.172 (C.56:11-37) is amended to read as follows:

C.56:11-37 Imposition of charge on consumer; exceptions.

10. a. Except as provided in subsections b., c., d. and e. of this section, a consumer reporting agency may impose a reasonable charge on a consumer for:

(1) making a disclosure to the consumer pursuant to section 7 of this act if the request is the second or subsequent request in a 12-month period of time and is not made pursuant to subsection b. of this section; the charge for this disclosure shall not exceed \$8 and shall be indicated to the consumer before making the disclosure;

(2) furnishing to a person designated by the consumer pursuant to subsection k. of section 9 of this act a statement, codification, or summary filed or developed under subsection i. or j. of section 9 of this act, after notification of the consumer under subsection f. of section 9 of this act with respect to the reinvestigation; this charge shall not exceed the charge that the agency would impose on each designated recipient for a consumer report and shall be indicated to the consumer before furnishing this information.

b. Each consumer reporting agency that maintains a file on a consumer shall make all disclosures required pursuant to section 7 of this act without charge to the consumer if, not later than 60 days after receipt by the consumer of a notification of an adverse action or notification from a debt collection agency affiliated with the consumer reporting agency stating that the consumer's

credit rating may be or has been adversely affected, the consumer makes a request under section 7 of this act.

c. Upon the request of the consumer, a consumer reporting agency shall make all disclosures required pursuant to section 7 of this act once during any 12-month period without charge to the consumer.

d. A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this act, including but not limited to, the notification required pursuant to subsection k. of section 9 of this act following deletion of information from a consumer's file pursuant to section 9 of this act, or making any disclosure required by this act, except as authorized by subsection a. of this section.

e. Upon request of the consumer, a consumer reporting agency shall make all disclosures required pursuant to section 7 of this act once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer:

(1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which certification is made;

(2) is a recipient of assistance under the Work First New Jersey Program;

(3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud; or

(4) has been a victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 and the court has ordered the deletion of those items of information that were the result of the unlawful use of the victim's personal identifying information.

10. This act shall take effect immediately.

Approved September 25, 2003.

CHAPTER 185

AN ACT concerning child abuse, amending P.L.1977, c.102 and supplementing Title 30 of the Revised Statutes.

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

1. Section 1 of P.L.1977, c.102 (C.9:6-8.10a) is amended to read as follows:

C.9:6-8.10a Records of child abuse reports; confidentiality; disclosure.

1. a. All records of child abuse reports made pursuant to section 3 of P.L.1971, c.437 (C.9:6-8.10), all information obtained by the Division of Youth

and Family Services in investigating such reports including reports received pursuant to section 20 of P.L. 1974, c. 119 (C.9:6-8.40), and all reports of findings forwarded to the central registry pursuant to section 4 of P.L. 1971, c. 437 (C.9:6-8.11) shall be kept confidential and may be disclosed only under the circumstances expressly authorized under subsections b., c., d., e., f. and g. herein. The division shall disclose information only as authorized under subsections b., c., d., e., f. and g. of this section that is relevant to the purpose for which the information is required, provided, however, that nothing may be disclosed which would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person or which may compromise the integrity of a division investigation or a civil or criminal investigation or judicial proceeding. If the division denies access to specific information on this basis, the requesting entity may seek disclosure through the Chancery Division of the Superior Court. This section shall not be construed to prohibit disclosure pursuant to paragraphs (2) and (7) of subsection b. of this section.

Nothing in this act shall be construed to permit the disclosure of any information deemed confidential by federal or State law.

b. The division may and upon written request, shall release the records and reports referred to in subsection a., or parts thereof, consistent with the provisions of P.L. 1997, c. 175 (C.9:6-8.83 et al.) to:

(1) A public or private child protective agency authorized to investigate a report of child abuse or neglect;

(2) A police or other law enforcement agency investigating a report of child abuse or neglect;

(3) A physician who has before him a child whom he reasonably suspects may be abused or neglected or an authorized member of the staff of a duly designated regional child abuse diagnostic and treatment center which is involved with a particular child who is the subject of the request;

(4) A physician, a hospital director or his designate, a police officer or other person authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and requires the information in order to determine whether to place the child in protective custody;

(5) An agency, whether public or private, including any other division or unit in the Department of Human Services, authorized to care for, treat, or supervise a child who is the subject of a child abuse report, or a parent, guardian or other person who is responsible for the child's welfare, or both, when the information is needed in connection with the provision of care, treatment, or supervision to such child or such parent, guardian or other person;

(6) A court or the Office of Administrative Law, upon its finding that access to such records may be necessary for determination of an issue before

it, and such records may be disclosed by the court or the Office of Administrative Law in whole or in part to the law guardian, attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court or the Office of Administrative Law;

(7) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(8) Any appropriate State legislative committee acting in the course of its official functions, provided, however, that no names or other information identifying persons named in the report shall be made available to the legislative committee unless it is absolutely essential to the legislative purpose;

(9) (Deleted by amendment, P.L.1997, c.175).

(10) A family day care sponsoring organization for the purpose of providing information on child abuse or neglect allegations involving prospective or current providers or household members pursuant to P.L.1993, c.350 (C.30:5B-25.1 et seq.) and as necessary, for use in administrative appeals related to information obtained through a central registry search;

(11) The Victims of Crime Compensation Board, for the purpose of providing services available pursuant to the "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.) to a child victim who is the subject of such report;

(12) Any person appealing a division service or status action or a substantiated finding of child abuse or neglect and his attorney or authorized lay representative upon a determination by the division or the presiding Administrative Law Judge that such disclosure is necessary for a determination of the issue on appeal;

(13) Any person or entity mandated by statute to consider child abuse or neglect information when conducting a background check or employment-related screening of an individual employed by or seeking employment with an agency or organization providing services to children;

(14) Any person or entity conducting a disciplinary, administrative or judicial proceeding to determine terms of employment or continued employment of an officer, employee, or volunteer with an agency or organization providing services for children. The information may be disclosed in whole or in part to the appellant or other appropriate person only upon a determination by the person or entity conducting the proceeding that the disclosure is necessary to make a determination;

(15) The members of a county multi-disciplinary team, established in accordance with State guidelines, for the purpose of coordinating the activities of agencies handling alleged cases of child abuse and neglect;

(16) A person being evaluated by the division or the court as a potential care-giver to determine whether that person is willing and able to provide the care and support required by the child;

(17) The legal counsel of a child, parent or guardian, whether court-appointed or retained, when information is needed to discuss the case with the division in order to make decisions relating to or concerning the child;

(18) A person who has filed a report of suspected child abuse or neglect for the purpose of providing that person with only the disposition of the investigation;

(19) A parent or legal guardian when the information is needed in a division matter in which that parent or guardian is directly involved. The information may be released only to the extent necessary for the requesting parent or guardian to discuss services or the basis for the division's involvement or to develop, discuss, or implement a case plan for the child;

(20) A federal, State or local government entity, to the extent necessary for such entity to carry out its responsibilities under law to protect children from abuse and neglect;

(21) Citizen review panels designated by the State in compliance with the federal "Child Abuse Prevention and Treatment Act Amendments of 1996," Pub.L. 104-235;

(22) The Child Fatality and Near Fatality Review Board established pursuant to P.L. 1997, c. 175 (C.9:6-8.83 et al.).

Any individual, agency, board, court, grand jury, legislative committee, or other entity which receives from the division the records and reports referred to in subsection a., shall keep such records and reports, or parts thereof, confidential and shall not disclose such records and reports or parts thereof except as authorized by law.

c. The division may share information with a child who is the subject of a child abuse or neglect report, as appropriate to the child's age or condition, to enable the child to understand the basis for the division's involvement and to participate in the development, discussion, or implementation of a case plan for the child.

d. The division may release the records and reports referred to in subsection a. of this section to any person engaged in a bona fide research purpose, provided, however, that no names or other information identifying persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and provided further that the approval of the Director of the Division of Youth and Family Services shall first have been obtained.

e. For incidents determined by the division to be substantiated, the division shall forward to the police or law enforcement agency in whose jurisdiction the child named in the report resides, the identity of persons alleged to have committed child abuse or neglect and of victims of child abuse or neglect, their addresses, the nature of the allegations, and other relevant information, including, but not limited to, prior reports of abuse or neglect and names of

siblings obtained by the division during its investigation of a report of child abuse or neglect. The police or law enforcement agency shall keep such information confidential.

f. The division may disclose to the public the findings or information about a case of child abuse or neglect which has resulted in a child fatality or near fatality. Nothing may be disclosed which would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person or which may compromise the integrity of a division investigation or a civil or criminal investigation or judicial proceeding. If the division denies access to specific information on this basis, the requesting entity may seek disclosure of the information through the Chancery Division of the Superior Court. No information may be disclosed which is deemed confidential by federal or State law. The name or any other information identifying the person or entity who referred the child to the division shall not be released to the public.

g. The division shall release the records and reports referred to in subsection a. of this section to a unified child care agency contracted with the Department of Human Services pursuant to N.J.A.C.10:15-2.1 for the purpose of providing information on child abuse or neglect allegations involving a prospective approved home provider or any adult household member pursuant to section 2 of P.L.2003, c.185 (C.30:5B-32) to a child's parent when the information is necessary for the parent to make a decision concerning the placement of the child in an appropriate child care arrangement.

The division shall not release any information that would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person.

C.30:5B-32 Child abuse record information check for prospective approved home providers.

2. a. A unified child care agency contracted with the Department of Human Services pursuant to N.J.A.C.10:15-2.1, shall request that the Division of Youth and Family Services in the Department of Human Services conduct a child abuse record information check of the division's child abuse records, as promptly as possible, to determine if an incident of child abuse or neglect has been substantiated, pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11), against:

(1) a prospective approved home provider as defined in N.J.A.C.10:15-1.2 providing child care services under the "New Jersey Cares for Kids Program" established pursuant to N.J.A.C.10:15-5.1, or to a child whose parent is receiving assistance under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.) or is employed but continues to receive supportive services pursuant to the provisions of section 5 of P.L.1997, c.13 (C.44:10-38); or

(2) any adult member of the prospective provider's household.

b. The division shall conduct the child abuse record information check only upon receipt of the prospective approved home provider's or any adult household member's written consent to the check. If the person refuses to provide his consent, the unified child care agency shall deny the prospective approved home provider's application to provide child care services.

c. If the division determines that an incident of child abuse or neglect by the prospective approved home provider or any adult member of the household has been substantiated, the division shall release the results of the child abuse record information check to the unified child care agency pursuant to subsection g. of section 1 of P.L.1977, c.102 (C.9:6-8.10a) and the agency shall deny the prospective approved home provider's application to provide child care services.

d. Before denying the prospective approved home provider's application to provide child care services, the unified child care agency shall give notice personally or by certified or registered mail to the last known address of the prospective approved home provider with return receipt requested, of the reasons why the application will be denied. The notice shall afford the prospective approved home provider the opportunity to be heard and to contest the agency's action. The hearing shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. If a prospective approved home provider's application to provide child care services is denied, the unified child care agency shall notify the parent of the child who would be eligible to receive such services, personally and in writing, of the reasons why the application was denied and the parent's right to select another provider. The parent shall keep such information confidential and shall not disclose the information except as authorized by law.

C.30:5B-33 Rules, regulations; procedures.

3. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services shall adopt rules and regulations necessary to effectuate the purposes of this act, including but not limited to:

a. Procedures for a unified child care agency to follow in submitting a request for a child abuse record information check on a prospective approved home provider or any adult member of the prospective provider's household;

b. Implementation of an appeals process to be used in the case of a denial of a prospective approved home provider's application to provide child care services based on a finding of substantiated child abuse or neglect; and

c. Establishment of time limits for conducting a child abuse record information check and providing a unified child care agency with the results of the check.

4. This act shall take effect on the 180th day following enactment, but the Commissioner of Human Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved September 26, 2003.

CHAPTER 186

AN ACT requiring criminal history record background and child abuse record information checks for staff in residential child care facilities and supplementing Titles 30 and 53 of the Revised Statutes.

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

C.30:4C-27.16 Definitions relative to background checks for residential child care staff.

1. As used in sections 1 through 6 and 8 through 11 of this act:

"Department" means the Department of Human Services.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Residential child care facility" or "facility" means any public or private establishment subject to the regulatory authority of the department that provides room, board, care, shelter or treatment services for children on a 24-hour-a-day basis. The term shall include: residential facilities operated by or under contract or agreement with the division to serve 13 or more children with emotional or behavioral problems as defined pursuant to section 2 of P.L.1951, c.138 (C.30:4C-2); group homes, treatment homes, teaching family homes, alternative care homes and supervised transitional living homes operated by or under contract or agreement with the division to serve 12 or fewer children with emotional or behavioral problems as defined pursuant to N.J.A.C.10:128-1.2; and shelter care facilities and homes, including shelters serving children in juvenile-family crisis and in need of temporary shelter care, as defined pursuant to section 3 of P.L.1982, c.77 (C.2A:4A-22).

"Staff member" means an individual 18 years of age or older who is an administrator of, employed by, or works in a facility on a regularly scheduled basis during the facility's operating hours, including full-time, part-time, voluntary, contract, consulting and substitute staff, whether compensated or not.

C.30:4C-27.17 Background checks required for securing, maintaining certificate of approval.

2. a. As a condition of securing or maintaining a certificate of approval from the department, the administrator of a facility shall ensure that a criminal

history record background check is conducted on each staff member of the facility.

b. If the administrator of the facility refuses to consent to, or cooperate in, the securing of a criminal history record background check, the department shall suspend, deny, revoke or refuse to renew the facility's certificate of approval, as appropriate.

c. If a staff member of a facility, other than the administrator, refuses to consent to, or cooperate in, the securing of a criminal history record background check, the individual shall be immediately terminated from employment at the facility.

C.30:4C-27.18 Facilities established after effective date; procedures.

3. a. In the case of a facility established after the effective date of this act, the administrator of the facility, prior to the facility's opening, shall ensure that a request for a criminal history record background check on each staff member is sent to the department for processing by the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation.

A staff member shall not be left alone as the only adult caring for a child at the facility until the staff member's criminal history record background has been reviewed by the department pursuant to this act.

b. In the case of a facility granted a certificate of approval prior to the effective date of this act, the administrator of the facility, at the time of the facility's first renewal of its certificate of approval, shall ensure that a request for a criminal history record background check on each staff member is sent to the department for processing by the Division of State Police and the Federal Bureau of Investigation.

c. Within two weeks after a new staff member begins employment at a facility, the administrator of the facility shall ensure that a request for a criminal history record background check on the new staff member is sent to the department for processing by the Division of State Police and the Federal Bureau of Investigation.

A new staff member shall not be left alone as the only adult caring for a child at the facility until the staff member's criminal history record background has been reviewed by the department pursuant to this act.

C.30:4C-27.19 Criteria for permanent disqualification.

4. Except as provided in subsection d. of this section, a current staff member or an applicant for employment shall be permanently disqualified from employment at or administering a facility if the criminal history record background check of the staff member or applicant reveals a record of conviction for any of the following crimes and offenses:

a. In New Jersey, any crime or disorderly persons offense as follows:

(1) a crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.2C:24-4; child molestation as set forth in N.J.S.2C:14-1 et seq.;

(2) abuse, abandonment or neglect of a child pursuant to R.S.9:6-3;

(3) endangering the welfare of an incompetent person pursuant to N.J.S.2C:24-7;

(4) sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.2C:14-2 through N.J.S.2C:14-4;

(5) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to N.J.S.2C:11-4;

(6) stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10);

(7) kidnaping and related offenses including criminal restraint, false imprisonment, interference with custody, criminal coercion, or enticing a child into a motor vehicle, structure or isolated area pursuant to N.J.S.2C:13-1 through N.J.S.2C:13-5 and section 1 of P.L.1993, c.291 (C.2C:13-6);

(8) arson pursuant to N.J.S.2C:17-1, or causing or risking widespread injury or damage, which would constitute a crime of the second degree pursuant to N.J.S.2C:17-2;

(9) aggravated assault, which would constitute a crime of the second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

(10) robbery, which would constitute a crime of the first degree pursuant to N.J.S.2C:15-1;

(11) burglary, which would constitute a crime of the second degree pursuant to N.J.S.2C:18-2;

(12) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.);

(13) terroristic threats pursuant to N.J.S.2C:12-3; or

(14) an attempt or conspiracy to commit any of the crimes or offenses listed in paragraphs (1) through (13) of this subsection.

b. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in subsection a. of this section.

c. Notwithstanding the provisions of this section to the contrary, an individual shall not be disqualified from employment at or administering a facility under this act on the basis of any conviction disclosed by a criminal history record background check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record pursuant to the provisions of section 7 of this act.

d. If a staff member of a facility is convicted of a crime specified in subsection a. of this section, the staff member shall be terminated from employment at or administering a facility, except that the department may approve the individual's employment at, or administration of, the facility if all of the following conditions are met:

(1) the department determines that the crime does not relate adversely to the position the individual is employed in pursuant to the provisions of P.L. 1968, c.282 (C.2A:168A-1 et seq.);

(2) the conviction is not related to a crime committed against a child, as specified in subsection a. of this section;

(3) the facility documents that the individual's employment or administration of the facility does not create a risk to the safety or well-being of children due to the nature and requirements of the position; as necessary, the facility shall identify restrictions regarding the individual's contact with, care or supervision of children;

(4) the facility documents that the individual is uniquely qualified for the position due to specific skills, qualifications, characteristics or prior employment experiences; and

(5) the department determines that the individual has affirmatively demonstrated rehabilitation, pursuant to the factors specified in subsection b. of section 5 of this act.

C.30:4C-27.20 Eligibility for employment for certain rehabilitated offenders; determination.

5. a. For crimes and offenses other than those cited in subsection a. of section 4 of this act, an applicant or staff member may be eligible for employment at, or to administer, a facility if the individual has affirmatively demonstrated to the department clear and convincing evidence of rehabilitation pursuant to subsection b. of this section.

b. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position at the facility that the convicted individual would hold, has held or currently holds, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the individual when the offense was committed;

(6) whether the offense was an isolated or repeated incident;

(7) any social conditions that may have contributed to the offense; and

(8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

c. The department shall make the final determination regarding the employment of the administrator of a facility with a criminal conviction specified under this section.

d. The administrator of the facility or the facility's board of directors shall make the final determination regarding the employment of a staff member or applicant with a criminal conviction specified under this section.

e. If the administrator of a facility has knowledge that a staff member has criminal charges pending against the staff member, the administrator shall promptly notify the department to determine whether or not any action concerning the staff member is necessary in order to ensure the safety of the children who are placed in the facility.

C.30:4C-27.21 Immunity from liability on use of background information.

6. a. A facility that has received an employment application from an individual or currently employs a staff member shall be immune from liability for acting upon or disclosing information about the disqualification or termination of that applicant or staff member to another facility seeking to employ that individual if the facility has:

(1) received notice from the department or the facility's board of directors, as applicable, that the applicant or staff member has been determined by the department or the board of directors to be disqualified from employment at a facility pursuant to this act; or

(2) terminated the employment of a staff member because the individual was disqualified from employment at the facility on the basis of a conviction of a crime pursuant to section 4 of this act after commencing employment at the facility.

b. A facility that acts upon or discloses information pursuant to subsection a. of this section shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the facility acted with actual malice toward the individual who is the subject of the information.

C.53:1-20.9d Exchange of fingerprint data, criminal history record information on residential child care staff.

7. a. The Commissioner of Human Services is authorized to exchange fingerprint data with, and to receive criminal history record information from, the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation.

Upon receipt of the criminal history record information for an applicant or staff member of a residential child care facility from the Federal Bureau of Investigation and the Division of State Police, the Department of Human Services shall notify the applicant or staff member, as applicable, and the residential child care facility, in writing, of the applicant's or staff member's qualification or disqualification for employment or service under section 4 or 5 of P.L.2003, c.186 (C.30:4C-27.19 or C.30:4C-27.20). If the applicant or staff member is disqualified, the convictions that constitute the basis for the disqualification shall be identified in the written notice to the applicant

or staff member. The applicant or staff member shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record information. If no challenge is filed or if the determination of the accuracy of the criminal history record information upholds the disqualification, the department shall notify the facility that the applicant or staff member has been disqualified from employment.

b. The Division of State Police shall promptly notify the Department of Human Services in the event an applicant or staff member, who was the subject of a criminal history record background check conducted pursuant to subsection a. of this section, is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of such notification, the department shall make a determination regarding the employment of the applicant or staff member.

C.30:4C-27.22 Child abuse record information check required for securing, maintaining certificate of approval.

8. a. As a condition of securing or maintaining a certificate of approval from the department, the administrator of a facility shall ensure that the division conducts a child abuse record information check of its child abuse records to determine if an incident of child abuse or neglect has been substantiated, pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11), against any staff member of the facility.

b. The department shall not issue a certificate of approval to a facility until the facility has requested that the division conduct a child abuse record information check on each staff member employed by or working at the facility.

c. The department shall deny, revoke or refuse to renew the facility's certificate of approval, as appropriate, if the department determines that an incident of child abuse or neglect by an administrator of a facility has been substantiated.

d. Each staff member of a facility shall provide prior written consent for the division to conduct a child abuse record information check.

e. If the administrator of the facility refuses to consent to, or cooperate in, the securing of a division child abuse record information check, the department shall suspend, deny, revoke or refuse to renew the facility's certificate of approval, as appropriate.

f. If a staff member of the facility, other than the administrator, refuses to consent to, or cooperate in, the securing of a division child abuse record information check, the individual shall be immediately terminated from employment at the facility.

g. The division shall complete the child abuse record information check within 45 days after receiving the request for the check.

C.30:4C-27.23 Facility established after effective date, request for staff background checks.

9. a. In the case of a facility established after the effective date of this act, the administrator of the facility, prior to the facility's opening, shall ensure that a request for a child abuse record information check on each staff member is sent to the division.

A staff member shall not be left alone as the only adult caring for a child at the facility until the results of the staff member's child abuse record information check have been received by the administrator of the facility.

b. In the case of a facility granted a certificate of approval prior to the effective date of this act, the administrator of the facility, at the time of the facility's first renewal of its certificate of approval, shall ensure that a request for a child abuse record information check on each staff member is sent to the division.

c. Within two weeks after a new staff member begins employment at a facility, the administrator of the facility shall ensure that a request for a child abuse record information check on the new staff member is sent to the division.

A new staff member shall not be left alone as the only adult caring for a child at the facility until the results of the staff member's child abuse record information check have been received by the administrator of the facility.

d. If the division determines that an incident of child abuse or neglect by a staff member has been substantiated, the division shall advise the administrator of the facility of the results of the child abuse record information check and the facility shall immediately terminate the individual from employment at the facility.

e. The department shall consider, for the purposes of this act, any incidents of child abuse or neglect that were substantiated on or after June 29, 1995, to ensure that perpetrators have had an opportunity to appeal a substantiated finding of abuse or neglect; except that the department may consider substantiated incidents prior to that date, if the department, in its judgment, determines that the individual poses a risk of harm to children in a facility. In cases involving incidents substantiated prior to June 29, 1995, the department shall offer the individual an opportunity for a hearing to contest its action restricting the individual from employment at a facility.

C.30:4C-27.24 Regulations relative to out-of-State facility serving State residents.

10. In the case of a facility located outside the State serving children who are residents of the State, the administrator of the facility shall ensure that an applicant or staff member meets all applicable laws and regulations in that state governing criminal history record background and child abuse record information checks that may be required as a condition of employment. In the event that criminal history record background and child abuse record information checks are not mandated, the administrator of the facility shall

require that the applicant or staff member make a voluntary disclosure of any criminal conviction. The results of the disclosure shall be made available to the department, so the department can determine the suitability of the individual for employment at the facility during the time children who are residents of the State are placed in the facility.

C.30:4C-27.25 Responsibility for costs, funding of background checks.

11. The department shall be responsible for the cost of processing and funding all criminal history record background and child abuse record information checks required pursuant to this act. The department shall also be responsible for paying the cost of obtaining the fingerprints or other identifier authorized by the Division of State Police, unless that service is available at no cost to the employee or individual seeking employment.

12. This act shall take effect take effect 180 days after enactment.

Approved September 26, 2003.

CHAPTER 187

AN ACT establishing the Office of the Child Advocate and supplementing Title 52 of the Revised Statutes.

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

C.52:17D-1 Office of the Child Advocate.

1. There is established the Office of the Child Advocate in the Executive Branch of the State Government. For purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of Law and Public Safety, but notwithstanding the allocation, the office shall be independent of any supervision or control by the department or board or officer thereof in the performance of its duties.

C.52:17D-2 Child Advocate, qualifications, appointment, term.

2. The administrator and chief executive officer of the office shall be the Child Advocate, who shall be an attorney admitted to practice law in New Jersey and be qualified by training and experience to perform the duties of the office.

The child advocate shall be appointed by the Governor and shall serve for a term of five years and until the appointment and qualification of his successor. The Governor shall have the power to remove the child advocate for cause. The child advocate shall devote his entire professional time to the

duties of this position and receive such salary as shall be provided by law. A vacancy occurring in the position of child advocate shall be filled in the same manner as the original appointment, except that if the child advocate dies, resigns, becomes ineligible to serve for any reason or is removed from office, the Governor shall appoint an acting child advocate who shall serve until the appointment and qualification of the child advocate's successor.

C.52:17D-3 Duties of the Child Advocate.

3. a. The child advocate shall:

(1) administer the work of the Office of the Child Advocate;

(2) appoint and remove such officers, investigators, stenographic and clerical assistants and other personnel, in the career or unclassified service, as may be required for the conduct of the office, subject to the provisions of Title 11A of the New Jersey Statutes (Civil Service), and other applicable statutes, except as provided otherwise herein;

(3) formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the office, its officers and employees, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and

(4) institute or cause to be instituted such legal proceedings or processes consistent with the Rules Governing the Courts of New Jersey as may be necessary to properly enforce and give effect to any of the child advocate's power or duties.

b. Consistent with the provisions of law, the child advocate shall have access to, including the right to inspect and copy, any records necessary to carry out his responsibilities under this act.

c. The child advocate may issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers and other documents, and administer oaths to witnesses in any matter under the investigation of the office.

If any person to whom such subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers or other documents required, the child advocate may apply to the Superior Court, which may order the person to appear and give testimony or produce the books, papers or other documents, as applicable.

d. The child advocate shall disseminate information to the public on the objectives of the office, the services the office provides and the methods by which the office may be contacted.

e. The child advocate shall aid the Governor in proposing methods of achieving increased coordination and collaboration among State agencies to ensure maximum effectiveness and efficiency in the provision of services to children.

C.52:17D-4 Purpose of Office of the Child Advocate.

4. a. The child advocate shall seek to ensure the provision of effective, appropriate and timely services for children at risk of abuse and neglect in the State, and that children under State supervision due to abuse or neglect are served adequately and appropriately by the State.

b. The Office of the Child Advocate shall be deemed a child protective agency for the purposes of section 1 of P.L.1977, c.102 (C.9:6-8.10a).

C.52:27D-5 Powers of the Child Advocate.

5. The child advocate may:

a. Investigate, review, monitor or evaluate any State agency response to, or disposition of, an allegation of child abuse or neglect in this State;

b. Inspect and review the operations, policies and procedures of:

(1) juvenile detention centers operated by the counties or the Juvenile Justice Commission;

(2) foster homes, group homes, residential treatment facilities, shelters for the care of abused or neglected children, shelters for the care of juveniles considered as juvenile-family crisis cases, shelters for the care of homeless youth, or independent living arrangements operated by or approved for payment by the Department of Human Services; and

(3) any other public or private residential setting in which a child has been placed by a State or county agency or department.

c. Review, evaluate, report on and make recommendations concerning the procedures established by any State agency providing services to children who are at risk of abuse or neglect, children in State or institutional custody, or children who receive child protective or permanency services;

d. Review, monitor and report on the performance of State-funded private entities charged with the care and supervision of children due to abuse or neglect by conducting research audits or other studies of case records, policies, procedures and protocols, as deemed necessary by the child advocate to assess the performance of the entities;

e. Receive, investigate and make referrals to other agencies or take other appropriate actions with respect to a complaint received by the office regarding the actions of a State, county or municipal agency or a State-funded private entity providing services to children who are at risk of abuse or neglect;

f. Hold a public hearing on the subject of an investigation or study underway by the office, and receive testimony from agency and program representatives, the public and other interested parties, as the child advocate deems appropriate; and

g. Establish and maintain a 24-hour toll-free telephone hotline to receive and respond to calls from citizens referring problems to the child advocate,

both individual and systemic, in how the State, through its agencies or contract services, protects children.

C.52:17D-6 Provision of findings, recommendations.

6. If the child advocate identifies a systemic problem in how the State, through its agencies or contract services, protects children, the child advocate shall provide its findings and recommendations to the agency affected by the findings and recommendations, and, except as provided in subsections b. and c. of section 11 of this act, make those findings and recommendations available to the public.

The agency shall have 30 days from the receipt of the findings and recommendations to develop a corrective action plan and submit the plan to the Department of Human Services for implementation. The child advocate shall monitor the department's implementation of the plan, and if the department fails to promptly implement the plan, the child advocate shall take such action as the child advocate deems necessary.

C.52:17D-7 Additional powers.

7. a. In addition to the powers granted in section 5 of this act, the child advocate may:

- (1) intervene in or institute litigation, or
- (2) intervene in or institute administrative proceedings before any department, commission, agency or State board, to assert the broad public interest of the State in the welfare of children and to protect and promote the rights of children.

In taking such actions, the child advocate shall consider whether a child or family may be in need of assistance from the child advocate or whether there is a systemic issue in the State's provision of services to children that should be addressed. The child advocate shall make a good faith effort to resolve issues or problems, and shall have the authority to commence negotiations, mediation or alternative dispute resolution in its advocacy efforts prior to, or in lieu of, the initiation of any action brought pursuant to this section.

b. The child advocate shall have discretion to decide whether to intervene in any particular matter or to represent or refrain from representing the public interest in a proceeding. The child advocate shall consider, in exercising his discretion, the resources available, the importance and extent of the public interest involved, and whether that interest would be adequately represented without the action of the office.

C.52:17D-8 Approval for direct communication with child.

8. a. The child advocate shall seek the approval of a parent or guardian or obtain the approval of a court of competent jurisdiction so as to communicate directly with a child who is the subject of a complaint or allegation of child

abuse or neglect, if necessary to conduct an investigation authorized under the provisions of this act. The communications with the child shall be conducted under such terms and conditions that protect the best interests of the child.

b. If court approval is sought, the court, in reviewing an application for approval, shall consider: (1) the best interests of the child, so as to minimize any detrimental effects on the child that may occur as a result of the communication; and (2) the investigative needs of the child advocate and law enforcement authorities, when applicable. Upon consideration of the factors in this subsection, the court may order any alternative methods for obtaining the required information.

C.52:17D-9 Protection of children institutionalized or in foster care.

9. The child advocate shall seek to ensure the protection of children who are in an institution or foster care by reviewing, evaluating and monitoring the operation and activities of the Institutional Abuse Investigation Unit in the Department of Human Services.

a. In order to enable the child advocate to carry out its responsibilities under this section, the Institutional Abuse Investigation Unit shall:

(1) promptly notify the child advocate of any allegations of abuse or neglect made against an institution or foster home serving children in this State;

(2) promptly provide the child advocate with a copy of the unit's response to the complaint and the actions taken by the unit to address the complaint;

(3) provide the child advocate with monthly updates of the status of actions proposed by the unit regarding an existing complaint that has not been resolved; and

(4) provide the child advocate with such other information as the child advocate may deem necessary to carry out his responsibilities to review, evaluate and monitor the operation and activities of the unit.

b. As used in this section, "institution" means a public or private facility, in this State or out-of-State, that provides children with out-of-home care, supervision or maintenance. Institution includes, but is not limited to: a correctional facility, detention facility, treatment facility, child care center, group home, residential school, shelter, psychiatric hospital and developmental center.

C.52:17D-10 Annual report to Governor, Commissioner of Human Services, Legislature.

10. The child advocate shall report annually to the Governor, Commissioner of Human Services and Legislature on: the activities of the office; priorities for children's services that have been identified by the child advocate; and recommendations for improvement or needed changes concerning the provision of services to children who are at risk of abuse or neglect, and are in State or institutional custody or receive child protective or permanency services by State agencies and State-funded private entities.

The annual report shall be made available to the public.

C.52:17D-11 Public reports; nondisclosure of certain information; confidentiality.

11. a. The child advocate shall make public its findings of any investigation reports or other studies undertaken by the office, including its investigatory findings to complaints received pursuant to section 5 of this act, and shall forward the findings to the Governor, the Commissioner of Human Services and the Governor's Cabinet for Children.

b. The child advocate shall not disclose to the public:

(1) any information that would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of a person who filed a complaint or which may compromise the integrity of a State or county department or agency investigation, civil or criminal investigation or judicial or administrative proceeding; and

(2) the name or any other information identifying the person who filed a complaint with the office.

The information subject to the provisions of this subsection shall not be considered a public record pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

c. The child advocate shall not disclose any information that may be deemed confidential by federal or State law, except when necessary to allow the Department of Human Services, Attorney General, Juvenile Justice Commission and other State or county department or agency to perform its duties and obligations under the law.

12. This act shall take effect immediately.

Approved September 26, 2003.

CHAPTER 188

AN ACT concerning tenant security deposits, amending P.L.1967, c.265 and P.L.1971, c.223 and supplementing chapter 8 of Title 46 of the Revised Statutes.

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

1. Section 1 of P.L.1967, c.265 (C.46:8-19) is amended to read as follows:

C.46:8-19 Security deposits; investment, deposit, disposition.

1. Whenever money or other form of security shall be deposited or advanced on a contract, lease or license agreement for the use or rental of real property as security for performance of the contract, lease or agreement or to be applied to payments upon such contract, lease or agreement when due, such money or other form of security, until repaid or so applied including the tenant's portion of the interest or earnings accumulated thereon as hereinafter provided, shall continue to be the property of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made for the use in accordance with the terms of the contract, lease or agreement and shall not be mingled with the personal property or become an asset of the person receiving the same.

The person receiving money so deposited or advanced shall:

a. (1) Invest that money in shares of an insured money market fund established by an investment company based in this State and registered under the "Investment Company Act of 1940," 54 Stat. 789 (15 U.S.C.s.80a-1 et seq.) whose shares are registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C.s.77a. et seq.) and the only investments of which fund are instruments maturing in one year or less, or (2) deposit that money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing a variable rate of interest, which shall be established at least quarterly, which is similar to the average rate of interest on active interest-bearing money market transaction accounts paid by the bank or association, or equal to similar accounts of an investment company described in paragraph (1) of this subsection.

This subsection shall not apply to persons receiving money for less than 10 rental units except where required by the Commissioner of Banking and Insurance by rule or regulation. The commissioner shall apply the provisions of this subsection to some or all persons receiving money for less than 10 rental units where the commissioner finds that it is practicable to deposit or invest the money received with an investment company or State or federally chartered bank, savings bank or savings and loan association in accordance with this subsection. Except as expressly provided herein, nothing in this subsection shall affect or modify the rights or obligations of persons receiving money for rental premises or units, tenants, licensees or contractees under any other law.

b. Persons not required to invest or deposit money in accordance with subsection a. of this section shall deposit such money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing interest at the

rate currently paid by such institutions and associations on time or savings deposits.

c. The person investing the security deposit pursuant to subsection a. or b. of this section shall notify in writing each of the persons making such security deposit or advance, giving the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment of security money is made, the type of account in which the security deposit is deposited or invested, the current rate of interest for that account, and the amount of such deposit or investment, in accordance with the following:

- (1) within 30 days of the receipt of the security deposit from the tenant;
- (2) within 30 days of moving the deposit from one depository institution or fund to another, except in the case of a merger of institutions or funds, then within 30 days of the date the person investing the security deposit receives notice of that merger, or from one account to another account, if the change in the account or institution occurs more than 60 days prior to the annual interest payment;
- (3) within 30 days after the effective date of P.L.2003, c.188 (C.46:8-21.4 et al.);
- (4) at the time of each annual interest payment; and
- (5) within 30 days after the transfer or conveyance of ownership or control of the property pursuant to section 2 of P.L.1967, c.265 (C.46:8-20).

All of the money so deposited or advanced may be deposited or invested by the person receiving the same in one interest-bearing or dividend yielding account as long as he complies with all the other requirements of this act.

The interest or earnings paid thereon by the investment company, State or federally chartered bank, savings bank or savings and loan association, shall belong to the person making the deposit or advance and shall be paid to the tenant in cash, or be credited toward the payment of rent due on the renewal or anniversary of said tenant's lease or on January 31, if the tenant has been given written notice after the effective date of P.L.2003, c.188 and before the next anniversary of the tenant's lease, that subsequent interest payments will be made on January 31 of each year.

If the person receiving a security deposit fails to invest or deposit the security money in the manner required under this section or to provide the notice or pay the interest to the tenant as required under this subsection, the tenant may give written notice to that person that such security money plus an amount representing interest at the rate of seven percent per annum be applied on account of rent payment or payments due or to become due from the tenant, and thereafter the tenant shall be without obligation to make any further security deposit and the person receiving the money so deposited shall not be entitled to make further demand for a security deposit. However, in the case of a failure

by the person receiving the security deposit to pay the annual interest or to provide the annual notice at the time of the annual interest payment, if the annual notice is not also serving as a notice of change of account or institution, before the tenant may apply the security deposit plus interest on account of the rent payment or payments due or to become due on the part of the tenant, the tenant shall first give that person a written notice of his failure and shall allow that person 30 days from the mailing date or hand delivery of this notice to comply with the annual interest payment or annual notice, or both.

d. The provisions of this section requiring that the security advanced be deposited or invested in a money market fund, or in an interest bearing account in a State or federally chartered bank, savings bank or savings and loan association shall not apply to any security advanced on a contract, lease or license agreement for the seasonal use or rental of real property. For purposes of this paragraph "seasonal use or rental" means use or rental for a term of not more than 125 consecutive days for residential purposes by a person having a permanent place of residence elsewhere. "Seasonal use or rental" does not mean use or rental of living quarters for seasonal, temporary or migrant farm workers in connection with any work or place where work is being performed. The landlord shall have the burden of proving that the use or rental of the residential property is seasonal.

2. Section 2 of P.L. 1967, c. 265 (C.46:8-20) is amended to read as follows:

C.46:8-20 Procedure on conveyance of property.

2. Any person, whether the owner or lessee of the property leased, who or which has or hereafter shall have received from a tenant or licensee a sum of money as a deposit or advance of rental as security for the full performance by such tenant or licensee of the terms of his contract, lease or license agreement, or who or which has or shall have received the same from a former owner or lessee, shall, upon conveying such property or assigning his or its lease to another, or upon the conveyance of such property to another person by a court in an action to foreclose a mortgage thereon, at the time of the delivery of the deed or instrument of assignment, or within five days thereafter, or in the event of the insolvency or bankruptcy of the person receiving said deposit, within five days after the making and entry of an order of the court discharging the receiver or trustee, deal with the security deposit by turning over to his or its grantee or assignee, or to the purchaser at the foreclosure sale the sum so deposited, plus the tenant's portion of the interest or earnings accumulated thereon, and notify the tenant or licensee by registered or certified mail of such turning over and the name and address of such grantee, assignee or purchaser. Notwithstanding any other provision of law to the contrary, it shall be the duty and obligation of the grantee, assignee or purchaser to obtain from the grantor who is the owner or lessee at the time of the transfer, conveyance

or purchase any and all security deposits, plus accrued interest on the deposits, that the owner or lessee received from a tenant, licensee or previous owner or lessee, and which deposits were invested, or should have been invested, in the manner required by section 1 of P.L. 1967, c. 265 (C.46:8-19).

3. Section 3 of P.L.1967, c.265 (C.46:8-21) is amended to read as follows:

C.46:8-21 Liability on transfer.

3. Any owner or lessee turning over to his or its grantee, assignee, or to a purchaser of the leased premises at a foreclosure sale the amount of such security deposit, plus the tenant's portion of the interest or earnings accumulated thereon, is hereby relieved of and from liability to the tenant or licensee for the repayment thereof. Whether or not the deposit plus accumulated interest are so transferred, the grantee, assignee or purchaser of the leased premises is nevertheless responsible for the proper investment of the security deposit, giving all notices and paying interest pursuant to section 1 of P.L.1967, c.265 (C.46:8-19) and for the return of the security deposit, plus any accumulated earnings or interest thereon, to the tenant or licensee, in accordance with the terms of the contract, lease, or agreement unless he or it shall thereafter and before the expiration of the term of the tenant's lease or licensee's agreement, transfer such security deposit to another, pursuant to section 2 of P.L.1967, c.365 (C.46:8-20) and give the requisite notice in connection therewith as provided thereby.

4. Section 3 of P.L.1971, c.223 (C.46:8-21.1) is amended to read as follows:

C.46:8-21.1 Return of deposit; displaced tenant.

3. Within 30 days after the termination of the tenant's lease or licensee's agreement, the owner or lessee shall return by personal delivery, registered or certified mail the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract, lease, or agreement, to the tenant or licensee, or, in the case of a lease terminated pursuant to P.L.1971, c.318 (C.46:8-9.1), the executor or administrator of the estate of the tenant or licensee or the surviving spouse of the tenant or licensee so terminating the lease. The interest or earnings and any such deductions shall be itemized and the tenant, licensee, executor, administrator or surviving spouse notified thereof by personal delivery, registered or certified mail. Notwithstanding the provisions of this or any other section of law to the contrary, no deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises.

Within five business days after a. the tenant is caused to be displaced by fire, flood, condemnation, or evacuation, and b. an authorized public official

posts the premises with a notice prohibiting occupancy, or c. any building inspector, in consultation with a relocation officer, where applicable, has certified within 48 hours that displacement is expected to continue longer than seven days and has so notified the owner or lessee in writing, the owner or lessee shall have available and return to the tenant or the tenant's designated agent upon his demand the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of the contract, lease or agreement and less any rent due and owing at the time of displacement.

Such net sum shall continue to be available to be returned upon demand during normal business hours for a period of 30 days at a location in the same municipality in which the subject leased property is located and shall be accompanied by an itemized statement of the interest or earnings and any deductions. The owner or lessee may, by mutual agreement with the municipal clerk, have the municipal clerk of the municipality in which the subject leased property is located return said net sum in the same manner. Within three business days after receiving notification of the displacement, the owner or lessee shall provide written notice to a displaced tenant by personal delivery or mail to the tenant's last known address. Such notice shall include, but not be limited to, the location at which and the hours and days during which said net sum shall be available to him. The owner or lessee shall provide a duplicate notice in the same manner to the relocation officer. Where a relocation officer has not been designated, the duplicate notice shall be provided to the municipal clerk. When the last known address of the tenant is that from which he was displaced and the mailbox of that address is not accessible during normal business hours, the owner or lessee shall also post such notice at each exterior public entrance of the property from which the tenant was displaced. Any such net sum not demanded by and returned to the tenant or the tenant's designated agent within the period of 30 days shall be redeposited or reinvested by the owner or lessee in an appropriate interest bearing or dividend yielding account in the same investment company, State or federally chartered bank, savings bank or savings and loan association from which it was withdrawn. In the event that said displaced tenant resumes occupancy of the premises, said tenant shall redeliver to the owner or lessee one-third of the security deposit immediately, one-third in 30 days and one-third 60 days from the date of reoccupancy. Upon the failure of said tenant to make such payments of the security deposit, the owner or lessee may institute legal action for possession of the premises in the same manner that is authorized for nonpayment of rent.

In any action by a tenant, licensee, executor, administrator or surviving spouse for the return of moneys due under this section, the court upon finding for the tenant, licensee, executor, administrator or surviving spouse shall award

recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees.

5. Section 4 of P.L.1971, c.223 (C.46:8-21.2) is amended to read as follows:

C.46:8-21.2 Limitation on amount of deposit.

4. An owner or lessee may not require more than a sum equal to 1 1/2 times 1 month's rental according to the terms of contract, lease, or agreement as a security for the use or rental of real property used for dwelling purposes. Whenever an owner or lessee collects from a tenant an additional amount of security deposit, the amount collected annually as additional security shall not be greater than 10 percent of the current security deposit.

C.46:8-21.4 Small claims jurisdiction of actions on security deposits less than \$5,000.

6. Notwithstanding any law or rule to the contrary, the Division of Small Claims of the Superior Court, Law Division, Special Civil Part shall have jurisdiction of actions between an owner or lessee and tenant for the return of all or a part of a security deposit in which the amount in dispute, including any applicable penalties, does not exceed the sum of \$5,000, exclusive of costs.

7. This act shall take effect on the first day of the third month after enactment.

Approved October 1, 2003.

CHAPTER 189

AN ACT concerning documentation required from business seeking certification as minority or women's business for certain State programs and amending P.L.1987, c.55 and amending and supplementing P.L.1986, c.195(C.52:27H-21.17 et seq.).

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

1. Section 5 of P.L.1987, c.55 (C.52:27H-21.11) is amended to read as follows:

C.52:27H-21.11 Powers of division.

5. The division shall have the power to:
a. Establish a loan referral program and loan packaging program for eligible businesses, using criteria for eligibility which meet the standards

established by the authority or which meet the standards established by private sources or by other State or federal programs;

b. Compile lists of qualified professionals, including women and minorities in specific areas of expertise, to be disseminated to eligible businesses and to be used in making referrals;

c. Use available resources within the State, including, but not limited to, small business development centers, business organizations, academic institutions with business programs, and minority business development offices, to coordinate managerial and technical assistance;

d. Establish, in cooperation with institutions of higher education, an internship program for candidates for undergraduate and graduate degrees in business administration and related fields for the purpose of providing assistance to the division, the authority and to businesses which are eligible to receive assistance under this act;

e. Provide, consistent with the provisions of this act and in conjunction with, or at the request of, the authority, assistance to eligible businesses, including, but not limited to:

- (1) Assistance in researching markets or in market analysis;
- (2) Advice in advertising and marketing;
- (3) Advice in selecting sales or other distribution channels;
- (4) Providing information and training with respect to bidding on government contracts;
- (5) Serving as liaison with the Department of the Treasury and other departments and agencies of State, federal and local government to promote the procurement of contracts for eligible businesses;
- (6) Assistance in obtaining legal counsel;
- (7) Providing financial analysis and accounting assistance;
- (8) Assistance in obtaining appropriate insurance, including benefit packages for employees;
- (9) Assistance in arranging contracts with franchisers;
- (10) Assistance in arranging commercial loans made by a State or federally chartered bank, savings bank, or savings and loan association, if, with respect to loans made by State chartered institutions, the loans are made in accordance with the powers conferred on those institutions pursuant to Title 17 of the Revised Statutes, including bridge loans and cash flow loans;
- (11) Assistance in negotiating license agreements;
- (12) Assistance in procuring bonding or substitutes therefor;
- (13) Making referrals to private consultants, institutions, and other providers of services, according to the specific needs of an eligible business;
- (14) Assistance in finding sources of financing from federal, State, and local sources;

(15) Assistance in gaining information about employee training and development programs; and

f. Provide a central resource for eligible businesses in their dealing with federal, State, and local governments, including information regarding government regulations or laws which affect eligible businesses;

g. Initiate and encourage education programs for eligible businesses;

h. Notwithstanding any other provision of law, exercise exclusive authority within the State to establish a uniform procedure for departments, agencies and authorities of the State and of its political subdivisions to certify the eligibility of a business to bid on contracts, or otherwise represent itself as a minority or women's business. The division shall be the certifying authority for departments, agencies and authorities of the State, except that when the division's procedure for certification of a business as a minority business or women's business conflicts with a federal certification procedure that affects a State project in which the federal government participates, the federal certification procedure shall take precedence. Public agencies shall identify those projects and shall notify the division. A political subdivision shall have the responsibility of certifying the eligibility of a women's business or minority business to bid on contracts or otherwise represent itself as a women's business or minority business within the political subdivision, except that, if the business is certified by the division to represent itself as being a minority or women's business under State programs, the political subdivision may accept that certification for eligibility of the business under programs of the political subdivision. A political subdivision shall utilize the uniform certification procedure formulated by the division;

i. Submit to the Governor and the Legislature an annual report regarding its activities and setting forth recommendations of methods which might be utilized to more efficiently and effectively carry out the purposes of this act, and submit to the commissioner periodic reports on the condition of small businesses, and women's and minority businesses in the State; and

j. Provide any other services which it deems necessary or which may be requested by the authority.

2. Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is amended to read as follows:

C.52:27H-21.18 Definitions.

2. As used in this act:

a. "Control" means authority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions and the rights of other shareholders or

joint partners; except that control shall not include absentee ownership, nor shall it be deemed to exist where an owner or employee who is not a minority, in the case of a minority business; or a male owner or employee, in the case of a women's business, is disproportionately responsible for the operation of the business or for policy and contractual decisions.

b. "Commissioner" means the Secretary and Chief Executive Officer of the New Jersey Commerce and Economic Growth Commission created pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

c. "Director" means the Director of the Division of Development for Small Businesses and Women's and Minority Businesses in the New Jersey Commerce and Economic Growth Commission created pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

d. "Division" means the Division of Development for Small Businesses and Women's and Minority Businesses in the New Jersey Commerce and Economic Growth Commission created pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

e. "Minority" means a person who is:

(1) Black, which is a person having origins in any of the black racial groups in Africa; or

(2) Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or

(3) Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian subcontinent, Hawaii, or the Pacific Islands; or

(4) American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

f. "Minority business" means a business which is:

(1) A sole proprietorship owned and controlled by a minority;

(2) A partnership or joint venture owned and controlled by minorities in which at least 51% of the ownership interest is held by minorities and the management and daily business operations of which are controlled by one or more of the minorities who own it; or

(3) A corporation or other entity whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51% owned by one or more minorities, or, if stock is issued, at least 51% of the stock is owned by one or more minorities.

g. "Public agency" means the State or any department, division, agency, authority, board, commission or committee thereof.

h. "Woman" or "women" means a female or females, regardless of race.

i. "Women's business" means a business which is:

(1) A sole proprietorship owned and controlled by a woman; or

(2) A partnership or joint venture owned and controlled by women in which at least 51% of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or

(3) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51% owned by women, or, if stock is issued, at least 51% of the stock is owned by one or more women.

j. "Applicant" means an individual or individuals, a sole proprietor, partnership, joint venture or corporation that applies for certification as a minority business or women's business, in accordance with the provisions of P.L.1986, c.195 (C.52:27H-21.17 et seq.).

3. Section 6 of P.L.1986, c.195 (C.52:27H-21.22) is amended to read as follows:

C.52:27H-21.22 Determining eligibility.

6. The director may require of a first-time applicant for certification as a minority business or women's business the documentation that is necessary to determine the applicant's eligibility for certification. Such documentation may include, but not be limited to:

- a. Names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
- b. Names and addresses of members of the board of directors, in the case of corporations;
- c. Names and addresses of the officers of the business;
- d. Number of shares of stock issued and outstanding, in the case of a corporation;
- e. Articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
- f. Organizational charts;
- g. An applicant's certificate of birth and motor vehicle driver's license; and
- h. An affidavit certifying that the applicant is a minority business or women's business, as defined pursuant to section 2 of P.L.1986, c.195 (C.52:27H-21.18).

The director shall not require an applicant to provide any personal federal or personal State income tax returns.

C.52:27H-21.22a Application for recertification for first-time applicant.

4. The director shall require a first-time applicant to apply for recertification as a minority business or women's business one year after the original certification was issued. The director may require of the applicant

the documentation that is necessary to determine the applicant's eligibility for recertification, including but not limited to:

- a. Names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
- b. Names and addresses of members of the board of directors, in the case of corporations;
- c. Names and addresses of the officers of the business;
- d. Names and addresses of capital investors;
- e. Number of shares of stock issued and outstanding, in the case of a corporation;
- f. Articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
- g. The capacity of the business to be bonded;
- h. The affiliation of the business or any of its owners, officers or directors with any other business entity;
- i. A representative list of prior and current clients;
- j. Major real and personal property holdings of the business;
- k. Financial statements and balance sheets;
- l. Banking institutions with which the business is affiliated; and
- m. Organizational charts;
- n. An applicant's certificate of birth and motor vehicle driver's license;
- o. Personal or corporate federal or State income tax returns;
- p. An affidavit certifying that the applicant is a minority business or women's business, as defined in section 2 of P.L. 1986, c. 195 (C.52:27H-21.18); and
- q. Any other information the director deems necessary to effectuate the purposes of this act.

C.52:27H-21.22b Application for recertification every five years; required.

5. After a minority business or women's business has been recertified after first receiving initial certification, the director shall require the certified minority business or certified women's business to apply for recertification every five years. The director may require of the applicant the documentation that is necessary to determine the applicant's eligibility for recertification, including but not limited to:

- a. Names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
- b. Names and addresses of members of the board of directors, in the case of corporations;
- c. Names and addresses of the officers of the business;
- d. Names and addresses of capital investors;

- e. Number of shares of stock issued and outstanding, in the case of a corporation;
- f. Articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
- g. The capacity of the business to be bonded;
- h. The affiliation of the business or any of its owners, officers or directors with any other business entity;
- i. A representative list of prior and current clients;
- j. Major real and personal property holdings of the business;
- k. Financial statements and balance sheets;
- l. Banking institutions with which the business is affiliated; and
- m. Organizational charts;
- n. An applicant's certificate of birth and motor vehicle driver's license;
- o. Personal or corporate federal or State income tax returns;
- p. An affidavit certifying that the applicant is a minority business or women's business, as defined in section 2 of P.L. 1986, c. 195 (C.52:27H-21.18); and
- q. Any other information the director deems necessary to effectuate the purposes of this act.

C.52:27H-21.22c Supplying false information, fourth degree crime.

6. Any applicant who knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled under P.L. 2003, c. 189 (C.52:27H-21.22a et al.) shall, upon conviction, be guilty of a crime of the fourth degree.

7. This act shall take effect immediately.

Approved October 3, 2003.

CHAPTER 190

AN ACT concerning certain profits related to crime, supplementing Title 52 of the Revised Statutes and repealing P.L. 1983, c. 33.

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

C.52:4B-61 Findings, declarations relative to profits related to crime.

1. a. The Legislature finds:

(1) The State of New Jersey has a compelling interest in preventing any person who is convicted of a crime from directly or indirectly profiting from the crime or circumstances surrounding the crime.

(2) To that end, the State has established the Victims of Crime Compensation Board to help compensate victims of crime for their loss.

b. The Legislature declares that it is altogether fitting and proper and within the public interest to provide a mechanism where profits from a crime that are received by a convicted person should be available as restitution to the victim of the crime.

C.52:4B-62 Definitions relative to profits related to crime.

2. For the purposes of this act:

a. "Crime" means:

(1) any crime as defined under the laws of this State; or

(2) any offense in any jurisdiction which includes all of the essential elements of any crime as defined under the laws of this State; and

(a) the crime victim was a resident of this State at the time of the commission of the offense; or

(b) the act or acts constituting the offense occurred in whole or in part in this State.

b. "Profits from a crime" means:

(1) any property obtained through or income generated from the commission of a crime of which the defendant was convicted;

(2) any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime, including any gain realized by such sale, conversion or exchange; and

(3) any property which the defendant obtained or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, a crime, as well as any property obtained by or income generated from the sale, conversion or exchange of such property and any gain realized by such sale, conversion or exchange.

c. "Funds of a convicted person" means all funds and property received from any source by a person convicted of a crime, or by the representative of such person, including the convicted person's spouse, children, parents, siblings or such other person whom a court of competent jurisdiction may deem to be the alter ego of the convicted person, giving due regard to the purpose and intent of this act, but excluding child support and earned income, where such person:

(1) is an inmate or prisoner serving a sentence under the custody and control of the Department of Corrections and includes funds received on behalf of

an inmate or prisoner and deposited in an inmate or prisoner account to the credit of the inmate or prisoner;

(2) is not an inmate or prisoner, but who is serving a sentence of probation or conditional discharge or is presently subject to a term of post release supervision, but shall include earned income earned during a period in which such person was not in compliance with the conditions of probation, conditional discharge or post release supervision; or

(3) is no longer subject to a sentence of probation, conditional discharge or post release supervision, and where, within the previous three years, the full or maximum term or period terminated or expired or such person was granted a discharge by the State Parole Board pursuant to applicable law, or granted a discharge or termination from probation pursuant to applicable law or granted a discharge or termination under applicable federal or State law, rules or regulations prior to the expiration of such full or maximum term or period; and includes only:

(a) those funds paid to such person as a result of any interest, right, right of action, asset, share, claim, recovery or benefit of any kind that the person obtained, or that accrued in favor of such person, prior to the expiration of such sentence, term or period;

(b) any recovery or award collected in a lawsuit after expiration of such sentence where the right or cause of action accrued prior to the expiration or service of such sentence; and

(c) earned income earned during a period in which such person was not in compliance with the conditions of probation, conditional release or post release supervision.

d. "Crime victim" means:

(1) the victim of a crime;

(2) the representative of a crime victim;

(3) a Good Samaritan, as provided in P.L.1963, c.140 (C.2A:62A-2 et seq.);

(4) the Victims of Crime Compensation Board or other governmental agency that has received an application for or provided financial assistance or compensation to the victim.

e. "Earned income" means income derived from one's own labor or through active participation in a business, but does not include income from dividends or investments.

f. "Board" means the Victims of Crime Compensation Board established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3).

C.52:4B-63 Requirement for written notice of payment to board.

3. a. Every person, firm, corporation, partnership, association or other legal entity, or representative of such person, firm, corporation, partnership,

association or entity, which knowingly contracts for, pays, or agrees to pay: (1) any profits from a crime to a person charged with or convicted of that crime, or to the representative of such person, or (2) any funds of a convicted person where such conviction is for a crime and the value, combined value or aggregate value of the payment or payments of such funds exceeds or will exceed \$10,000 shall give written notice to the board of the payment or obligation to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from a crime or funds of a convicted person.

b. Notwithstanding subsection a. of this section, whenever the payment or obligation to pay involves funds of a convicted person that a superintendent of a correctional facility receives or will receive on behalf of an inmate or prisoner serving a sentence with the Department of Corrections and deposits or will deposit in an inmate or prisoner account to the credit of the inmate or prisoner and the value, combined value or aggregate value of such funds exceeds or will exceed \$10,000, the superintendent shall also give written notice to the board. Further, whenever the State makes payment or has an obligation to pay funds of a convicted person and the value, combined value or aggregate value of such funds exceeds or will exceed \$10,000, the State shall also give written notice to the board. In all other instances where the payment or obligation to pay involves funds of a convicted person and the value, combined value or aggregate value of such funds exceeds or will exceed \$10,000, the convicted person who receives or will receive such funds, or the representative of such person, shall give written notice to the board.

c. The board, upon receipt of notice of a contract, an agreement to pay or payment of profits from a crime or funds of a convicted person pursuant to subsection a. or b. of this section, or upon receipt of notice of funds of a convicted person from the superintendent where the inmate or prisoner is confined, shall notify all known crime victims of the convicted person of the existence of such profits or funds at their last known address.

C.52:4B-64 Crime victim right to bring civil action for damages; statute of limitations.

4. Notwithstanding any other law to the contrary, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of a crime of which the crime victim is a victim, or the representative of that convicted person, within three years of the discovery of any profits from a crime or funds of a convicted person, as those terms are defined in this act. Notwithstanding any other provision of law to the contrary, a judgment obtained pursuant to this section shall not be subject to execution or enforcement against the first \$1,000 dollars deposited in an inmate account to the credit of the inmate or in a prisoner account to the credit of the prisoner. In addition, where the civil action involves funds of a convicted person and such funds were recovered by the convicted person

pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section may not be subject to execution or enforcement against a portion thereof. If an action is filed pursuant to this section after the expiration of all other applicable statutes of limitation, any other crime victims must file any action for damages as a result of the crime within three years of the actual discovery of such profits or funds, or within three years of actual notice received from or notice published by the board of such discovery, whichever is later.

C.52:4B-65 Notice of filing of action to board.

5. Upon filing an action pursuant to section 4 of this act, the crime victim shall give notice to the board of the filing by delivering a copy of the summons and complaint to the board. The crime victim may also give such notice to the board prior to filing the action so as to allow the board to apply for any appropriate provisional remedies which are otherwise authorized to be invoked prior to the commencement of an action.

C.52:4B-66 Actions of board upon receipt of notice from crime victim.

6. Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the crime victim prior to filing the action as provided in section 5 of this act, the board shall immediately take such actions as are necessary to:

- a. notify all other known crime victims of the alleged existence of profits from a crime or funds of a convicted person by certified mail, return receipt requested, where the victims' names and addresses are known by the board;
- b. publish, at least once every six months for three years from the date it is initially notified by a victim, pursuant to section 5 of this act, a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising any crime victims of the existence of profits from a crime or funds of a convicted person. The board may, in its discretion, provide for such additional notice as it deems necessary;
- c. avoid the wasting of the assets identified in the complaint as the newly discovered profits from a crime or as funds of a convicted person.

C.52:4B-67 Provisional remedies available to board, plaintiff.

7. The board, acting on behalf of the plaintiff and all other victims, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff.

- a. The provisional remedies of attachment, injunction, receivership and notice of pendency available to the plaintiff under the civil practice law and rules, shall also be available to the board in all actions under this section.
- b. On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same

action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

C.52:4B-68 Failure to give notice of payment; notice of hearing, proceedings; findings, penalties.

8. a. Whenever it appears that a person or entity has knowingly and willfully failed to give notice in violation of subsection a. of section 3 of this act, the board shall be authorized to serve a notice of hearing upon the person or entity by personal service or by registered or certified mail. The notice shall contain the time, place and purpose of the hearing. In addition, the notice shall be accompanied by a petition alleging facts of an evidentiary character that support or tend to support that the person or entity, who shall be named therein as a respondent, knowingly and willfully failed to give the notice required in subsection a. of section 3 of this act. Service of the notice and petition shall take place at least 15 days prior to the date of the hearing.

b. The chairperson of the board, or any board member designated by the chairperson, shall preside over the hearing. The presiding member shall administer oaths and may issue subpoenas. The presiding member shall not be bound by the rules of evidence or civil procedure, but the presiding member's determination shall be based on a preponderance of the evidence. At the hearing, the burden of proof shall be on the board, which shall be represented by the counsel to the board or another person designated by the board. The board shall produce witnesses and present evidence in support of the alleged violation, which may include relevant hearsay evidence. The respondent, who may appear personally at the hearing, shall have the right of counsel and may cross-examine witnesses and produce evidence and witnesses in his behalf, which may include relevant hearsay evidence. The issue of whether the person who received an alleged payment or obligation to pay committed the underlying crime shall not be relitigated at the hearing. Where the alleged violation is the failure to give notice of a payment amount involving two or more payments the combined value or aggregate value of which exceeds \$10,000, no violation shall be found unless it is shown that such payments were intentionally structured to conceal their character as funds of a convicted person. At the conclusion of the hearing, if the presiding member is not satisfied that there is a preponderance of evidence in support of a violation, the member shall dismiss the petition. If the presiding member is satisfied that there is a preponderance of the evidence that the respondent committed one or more violations, the member shall so find. Upon such a finding, the presiding member shall prepare a written statement, to be made available to the respondent and respondent's counsel, indicating the evidence relied on and the reasons for finding the violation. The board shall adopt, promulgate, amend and repeal administrative rules and regulations governing the procedures to be followed with respect to hearings, including rules and regulations for the administrative

appeal of a decision made pursuant to this paragraph, provided such rules and regulations are consistent with the provisions of this section.

c. Whenever it is found that a respondent knowingly and willfully failed to give the required notice, the board shall impose an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to \$1,000 or ten percent of the payment or obligation to pay, whichever is greater. If a respondent fails to pay the assessment and civil penalty imposed, the assessment and civil penalty may be recovered from the respondent by an action brought by the Attorney General, upon the request of the board, in any court of competent jurisdiction. The board shall deposit the assessment in an escrow account pending the expiration of the three-year statute of limitations authorized by section 4 of this act to preserve such funds to satisfy a civil judgment in favor of a person who is a victim of a crime committed by the convicted person to whom such failure to give notice relates. The board shall pay the civil penalty to the State Treasurer who shall deposit the money in the State treasury. The board shall then notify any crime victim or crime victims, who may have a claim against the convicted person, of the existence of such moneys. Such notice shall instruct such person or persons that they may have a right to commence a civil action against the convicted person, as well as any other information deemed necessary by the board. Upon a crime victim's presentation to the board of a civil judgment for damages incurred as a result of the crime, the board shall satisfy up to 100 percent of that judgment, including costs and disbursements as taxed by the clerk of the court, with the escrowed fund, but in no event shall the amount of all judgments, costs and disbursements satisfied from such escrowed funds exceed the amount in escrow. If more than one such crime victim indicates to the board that they intend to commence or have commenced a civil action against the convicted person, the board shall delay satisfying any judgment, costs and disbursements until the claims of all such crime victims are reduced to judgment. If the aggregate of all judgments, costs and disbursement obtained exceeds the amount of escrowed funds, the amount used to partially satisfy each judgment shall be reduced to a pro rata share.

After expiration of the three-year statute of limitations period established in section 4 of this act, the board shall review all judgments that have been satisfied from such escrowed funds. In the event no claim was filed or judgment obtained prior to the expiration of the three-year statute of limitations, the board shall return the escrowed amount to the respondent. In the event a claim or claims are pending at the expiration of the statute of limitations, such funds shall remain escrowed until the final determination of all such claims to allow the board to satisfy any judgment which may be obtained by the crime victim. Upon the final determination of all such claims and the satisfaction of up to 100 percent of such claims by the board, the board shall be authorized to impose

an additional civil penalty of up to \$1,000 or ten percent of the payment or obligation to pay, whichever is greater. Prior to imposing any such penalty, the board shall serve a notice upon the respondent by personal service or by registered or certified mail of the intent of the board to impose such penalty 30 days after the date of the notice and of the opportunity to submit documentation concerning the board's determination. After imposing and deducting any such additional civil penalty, the board shall distribute 50 percent of the remaining escrowed funds to the State Treasurer, who shall deposit the money in the General Fund for general State purposes. The other 50 percent of the remaining escrowed funds shall be distributed to the board and may be used for purposes the board deems appropriate, including, but not limited to, awarding scholarships pursuant to P.L.2000, c.163 (C.18A:71B-53 et seq.), the Tony Pompelio Commemorative Scholarship Fund Act.

d. Notwithstanding any other provision of law to the contrary, an alleged failure by a convicted person to give notice under this act may not result in proceedings for an alleged violation of the conditions of probation, conditional release or post release supervision unless: one or more claims were made by a crime victim against the convicted person pursuant to this section, and the crime victims board imposes an assessment or penalty upon the convicted person pursuant to this section, and the convicted person fails to pay the total amount of the assessment or penalty within sixty days of the imposition of such assessment or penalty.

e. Records maintained by the board and proceedings by the board or a board member based thereon regarding a claim submitted by a victim or a claimant shall be deemed confidential.

C.52:4B-69 Cause of action by crime victim for enhanced value of memorabilia gained from crime.

9. a. A crime victim shall have a cause of action against any person who offers for sale or purports to offer for sale, any memorabilia or other property or item of the defendant, the value of which is enhanced by the notoriety gained from the commission of the crime.

b. Upon proof, by a preponderance of the evidence, of a person's violation of this section and of resulting damages, the person shall be liable as follows:

(1) To the person or persons injured, for an award in the amount of damages incurred as a result of the sale or purported sale of the defendant's property, including damages for any emotional distress suffered as a result of the sale, such punitive damages as may be assessed, and any reasonable attorney's fees and costs of suit incurred; and

(2) Such injunctive relief as the court may deem necessary to avoid the defendant's continued violation.

C.52:4B-70 Severability.

10. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Repealer.

11. P.L.1983, c.33 (C.52:4B-26 et seq.) is repealed.

12. This act shall take effect immediately.

Approved October 15, 2003.

CHAPTER 191

AN ACT concerning staff working with persons with developmental disabilities or traumatic brain injury and supplementing Titles 30 and 45 of the Revised Statutes.

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

C.30:6D-5.1 Short title.

1. This act shall be known and may be cited as "Danielle's Law."

C.30:6D-5.2 Definitions relative to staff working with persons with developmental disabilities, traumatic brain injury.

2. As used in this act:

"Commissioner" means the Commissioner of Human Services.

"Department" means the Department of Human Services.

"Facility for persons with developmental disabilities" means a facility for persons with developmental disabilities as defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

"Facility for persons with traumatic brain injury" means a facility for persons with traumatic brain injury that is operated by, or under contract with, the department.

"Life-threatening emergency" means a situation in which a prudent person could reasonably believe that immediate intervention is necessary to protect the life of a person receiving services at a facility for persons with developmental disabilities or a facility for persons with traumatic brain injury or from a public or private agency, or to protect the lives of other persons at the facility or agency, from an immediate threat or actual occurrence of a potentially fatal injury, impairment to bodily functions or dysfunction of a bodily organ or part.

"Public or private agency" means an entity under contract with, licensed by or working in collaboration with the department to provide services for persons with developmental disabilities or traumatic brain injury.

C.30:6D-5.3 Responsibilities of staff at facility for persons with developmental disabilities, traumatic brain injury.

3. a. A member of the staff at a facility for persons with developmental disabilities or a facility for persons with traumatic brain injury or a member of the staff at a public or private agency, who in either case works directly with persons with developmental disabilities or traumatic brain injury, shall be required to call the 911 emergency telephone service for assistance in the event of a life-threatening emergency at the facility or the public or private agency, and to report that call to the department, in accordance with policies and procedures established by regulation of the commissioner. The facility or the public or private agency, as applicable, and the department shall maintain a record of such calls under the policy to be established pursuant to this section.

b. The department shall ensure that appropriate training is provided to each member of the staff at a facility for persons with developmental disabilities or a facility for persons with traumatic brain injury or member of the staff at a public or private agency, who in either case works directly with persons with developmental disabilities or traumatic brain injury, to effectuate the purposes of subsection a. of this section.

C.30:6D-5.4 Violations, penalties.

4. A member of the staff at a facility for persons with developmental disabilities or a facility for persons with traumatic brain injury or a member of the staff at a public or private agency who violates the provisions of section 3 of this act shall be liable to a civil penalty of \$5,000 for the first offense, \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense, to be sued for and collected in a summary proceeding by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.).

C.30:6D-5.5 Record of violations.

5. The department shall maintain a record of violations of the provisions of section 3 of this act, which shall be included in the criteria that the department considers in making a decision on whether to renew the license of a facility or whether to renew a contract with a public or private agency, as applicable.

C.45:1-21.3 Violation of the responsibility to make 911 call, forfeiture of license, authorization to practice.

6. A health care professional licensed or otherwise authorized to practice as a health care professional pursuant to Title 45 of the Revised Statutes who violates the provisions of section 3 of P.L.2003, c.191 (C.30:6D-5.3) shall,

in addition to being liable to a civil penalty pursuant to section 4 of P.L.2003, c.191 (C.30:6D-5.4), be subject to revocation of that individual's professional license or other authorization to practice as a health care professional by the appropriate licensing board in the Division of Consumer Affairs in the Department of Law and Public Safety, after appropriate notice and opportunity for a hearing.

C.30:6D-5.6 Rules, regulations.

7. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to effectuate the purposes of this act.

8. This act shall take effect on the 180th day after enactment, but the Commissioner of Human Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved October 26, 2003.

CHAPTER 192

AN ACT concerning the Delaware River and Bay Authority and amending and supplementing P.L.1961, c.66.

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

1. Section 1 of P.L.1961, c.66 (C.32:11E-1) is amended to read as follows:

C.32:11E-1 Delaware-New Jersey Compact.

1. The State of New Jersey hereby agrees with the State of Delaware, upon enactment by the State of Delaware of legislation having the same effect as this section, to the following compact:

DELAWARE-NEW JERSEY COMPACT

Whereas, The states of Delaware and New Jersey are separated by the Delaware River and Bay which create a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two states thereby hindering the economic growth and development of those areas in both states which border the river and bay; and
Whereas, The pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the two states in order to advance the economic

development and to improve crossings, transportation, terminal and other facilities of the area; and

Whereas, The financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two states and their citizens, the region and nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

Whereas, The Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. s.1701) and P.L.1961, c.66 (C.32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress in accordance with Pub.L.87-678 (1962), created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both states which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

Whereas, The economic growth and development of areas of both states will be further advanced by authorizing the authority to undertake economic development projects, other than major projects as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the state in which the project is to be located, except that the authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two states; and

Whereas, The natural environment of those areas in the two states which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the authority shall be in complete compliance with all applicable environmental protection laws and regulations before the authority may undertake the planning, development, construction or operation of any project, other than a crossing;

NOW, THEREFORE, The State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

ARTICLE I SHORT TITLE

This compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II
DEFINITIONS

"Charge card" means any card, plate, coupon book or other device existing for the purpose of obtaining money, property, labor, services or anything else of value on credit which is not subject to a finance charge.

"Credit card" means any card, plate, coupon book or other device existing for the purpose of obtaining money, property, labor, services or anything else of value on credit which may be subject to a finance charge.

"Financial records" mean all receipts and records of disbursements, revenues and expenses, operating and capital outlay expenses, assets and liabilities, including the fiscal status of authority facilities, projects and developments, including the status of reserve, depreciation, special or other funds and the receipts and payments of these funds, and schedules of authority bonds and notes.

"Information" means all authority books, papers, maps, photographs, cards or other documentary materials, regardless of physical form or characteristics.

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the states, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing as herein defined, adapted for public use within each of the states party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

"Commerce facility or development" means any structure or facility adapted for public use or any development for a public purpose within each of the states party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal, and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and any other facility or activity designed, directly or indirectly, to promote business or commerce which, in the judgment of the authority, is required for the sound economic development of the area.

"Appurtenances" and "equipment" mean all works, buildings, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility, or commerce facility or development.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Major project" means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, as determined in accordance with state law by the environmental agency of the state in which the major project is to be located.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each state to exercise the functions, powers and duties of that office.

"Authority" means the authority created by this compact or any agency successor thereto.

The singular whenever used in this compact shall include the plural, and the plural shall include the singular.

ARTICLE III FAITHFUL COOPERATION

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the authority created by this compact.

ARTICLE IV ESTABLISHMENT OF AGENCY; PURPOSES

The two states agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the "authority"), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be

exercising essential government functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the states of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, together with such approaches or connections thereto as in the judgment of the authority are required to make adequate and efficient connections between such crossings and any public highway, or other routes in the State of Delaware or in the State of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which facility, in the judgment of the authority, is required for the sound economic development of the area; and

(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which in the judgment of the authority is required for the sound economic development of the area; and

(d) The performance of such other functions as may be hereafter entrusted to the authority by concurrent legislation expressly in implementation hereof.

The authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the state in which the project is to be located.

The authority shall not undertake any major project, or part thereof, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two states expressly in implementation thereof.

The authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the state in which the major project is to be located. Each state shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

(e) The commissioners of the authority shall be responsible for appointing a Director of Economic Development or Deputy Executive Director and an appropriate number of supporting staff as deemed necessary by the authority to oversee commerce and economic development activity by the authority in the New Jersey counties of Cape May, Cumberland, Gloucester and Salem. The commissioners of the authority shall also be responsible for appointing

a separate Director of Economic Development or Deputy Executive Director and an appropriate number of supporting staff as deemed necessary by the authority to oversee commerce and economic development activity by the authority in the State of Delaware. The authority shall not permit the appointment of the Directors of Economic Development or Deputy Executive Directors and supporting staff pursuant to this subsection to increase the budget of the authority.

ARTICLE V COMMISSIONERS

a. The authority shall consist of 12 commissioners, six of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of Delaware, and six of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of New Jersey; not more than three of the commissioners of each state shall be of the same political party; the commissioners for each state shall be appointed in the manner fixed and determined from time to time by the law of each state respectively. Each commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first commissioners shall be so designated that the term of at least one commissioner from each state shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any commissioner may be suspended or removed from office as provided by law of the state from which he shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the authority and may not receive any other compensation for services to the authority except such as may from time to time be authorized from such revenues by concurrent legislation.

b. The authority shall not permit any commissioner or other person acting on its behalf to use a credit card or charge card established in the name of, or the account of which is paid for by, the authority for the purpose of obtaining money, property, labor, services or anything else of value, except that such credit card or charge card may be used for the purposes of the business of the authority provided that the expenses and purchases by credit card or charge card do not exceed the maximum annual amount established by joint agreement between the Governor of the State of Delaware and the Governor of the State of New Jersey for the use of such cards.

c. The authority shall not permit any commissioner or other person acting on its behalf to incur expenses and purchases, other than by credit card or charge card, in the performance of their official duties or on behalf of the authority except that such expenses and purchases may be incurred for the purposes

of the business of the authority provided that such expenses do not exceed the maximum annual amount established by joint agreement between the Governor of the State of Delaware and the Governor of the State of New Jersey for such expenses and purchases.

ARTICLE VI BOARD ACTION

The commissioners shall have charge of the authority's property and affairs and shall, for the purpose of doing business, constitute a board; but no action of the commissioners including, but not limited to the adoption of the annual capital plan, including specifically the economic development portion of that plan, shall be binding or effective unless taken at a meeting at which at least four commissioners from each state are present, and unless at least four commissioners from each state shall vote in favor thereof. The vote of any one or more of the commissioners from each state shall be subject to cancellation by the Governor of such state at any time within 10 days (Saturdays, Sundays and public holidays in the particular state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each state may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

ARTICLE VII GENERAL POWERS

For the effectuation of its authorized purposes, the authority is hereby granted the following powers:

- a. To have perpetual succession.
- b. To adopt and use an official seal.
- c. To elect a chairman and a vice-chairman from among the commissioners. The chairman and vice-chairman shall be elected from different states, and shall each hold office for two years. The chairmanship and vice-chairmanship shall be alternated between the two states.
- d. To adopt bylaws to govern the conduct of its affairs by the board of commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no bylaw, or rule, regulation or order shall take effect until it has been filed with the Secretary of State of each state or in such other manner in each state as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility or commerce facility or development owned or operated by the authority, including approach roads, it shall consult with appropriate officials

of both states in order to insure, as far as possible, uniformity of such rules, regulations and orders with the law of both states.

e. To appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

f. To enter into contracts and agreements with either state or with the United States, or with any public body, department, or other agency of either state or of the United States or with any individual, firm or corporation, deemed necessary or advisable for the exercise of its purposes and powers.

g. To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

h. To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another, and which the authority is authorized to own and operate.

i. To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the authority for the purpose of connecting the same with any highway or other route in either state.

j. To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the authority and by a facsimile of its corporate seal.

k. To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

l. To grant the use of, by franchise, lease or otherwise, and to make charges for the use of, any crossing, facility or other project or property owned or controlled by it.

m. To exercise the right of eminent domain to acquire any property or interest therein.

n. To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

o. To exercise all other powers not inconsistent with the Constitutions of the two states or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII ADDITIONAL POWERS

For the purpose of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either state without the concurrence of the other, and may be exercised within such state, or may be granted to the authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the authority under the law of either state or of Congress without authorization by the law of both states.

ARTICLE IX EMINENT DOMAIN

If the authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the authority, shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either state, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the state in which the project is to be located. The authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

In any condemnation proceeding in connection with the acquisition by the authority of property or property rights of any character in either state and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the state in which such property is located with respect to the condemnation

of property for the construction, reconstruction and maintenance of highways therein, shall control. The authority shall have the same power and authority with respect thereto as the state agency named in any such law; provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two states with respect to the enactment, repeal or amendment of any law or rule of court on the subject of condemnation under which the authority may proceed by virtue of this article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the state.

The power of the authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

ARTICLE X REVENUES AND APPLICATION

a. The authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable, in connection with any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the authority, together with interest thereon and (3) to provide reserves for such purposes; and the authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects, such proportion of the general expenses of the authority as it shall deem properly chargeable thereto.

b. No action taken by the authority to increase tolls, charges or fares on the Delaware Memorial Bridge or the Cape May-Lewes Ferry shall have force

or effect without first giving public notice and holding public hearings within the New Jersey counties of Cape May, Cumberland, Gloucester and Salem and all counties in the State of Delaware concerning the proposed increase in tolls, charges or fares. The authority shall be required to provide appropriate supporting information and financial records related to the proposed increase in tolls, charges or fares to the presiding officers of the Legislature of the State of Delaware and the Legislature of the State of New Jersey at least five days in advance of the first public hearing required to be held on the proposed increase.

ARTICLE XI COVENANT WITH BONDHOLDERS

The two said states covenant and agree with each other and with the holders of any bonds or other securities or obligations of the authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility, commerce facility or development, or other project, that the two said states will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish or impair the power of the authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the two said states will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV (a) of this compact, by any person or body other than the authority; unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

ARTICLE XII SECURITIES LAWFUL INVESTMENTS

The bonds or other securities or obligations which may be issued by the authority pursuant to this compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all state and municipal officers and bodies of each state, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either state, may properly and legally invest any funds, including capital, belonging to them or within their control; and

said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency of either state for any purpose for which the deposit of bonds or other obligations of such state is now or may hereafter be authorized.

ARTICLE XIII TAX STATUS

The powers and functions exercised by the authority under this compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the states of Delaware and New Jersey, the region and nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

ARTICLE XIV JURISDICTION; USE OF LANDS

Each of the two states hereby consents to the use and occupancy by the authority of any lands and property of the authority in such state for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

Each state may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI
NO PLEDGE OF CREDIT

The authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey, or of any other agency or of any political subdivision of said states.

ARTICLE XVII
LOCAL COOPERATION AND AGREEMENTS

a. All municipalities, political subdivisions and every department, agency or public body of each of the states are hereby authorized and empowered to cooperate with, aid and assist the authority in effectuating the provisions of this compact and of any amendment hereof or supplement hereto.

b. The authority is authorized and empowered to cooperate with each of the states, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the state in which the project is to be located, with each of the states, or with any political subdivision thereof, and with any municipality, county, local government, agency, public authority or commission or with two or more of them, for or relating to such purposes.

c. The authority and the city, town, municipality or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowered, subject to compliance with the laws of the state in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules and regulations, if any, of the city, town, municipality or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

ARTICLE XVIII
DEPOSITARIES

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either state are authorized to give security for the safekeeping and prompt payment of moneys of the authority deposited by it with them, in such manner and form as may be required by and may be approved by the authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the authority, or may consist of the deposit with the authority or other depository approved by the authority as collateral of such securities as the authority may approve.

ARTICLE XIX
AGENCY POLICE

Members of the police force established by the authority, regardless of their residence, shall have in each state, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated or controlled by the authority, and at such other places and under such circumstances as the law of each state may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such state or usually exercised by such officers in each state.

ARTICLE XX
REPORTS AND AUDITS

a. The authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each state.

It shall furnish such information or data with respect to its affairs as may be requested by the Governor or Legislature of each state.

b. The authority shall, within 180 days after the end of each fiscal year of the authority, submit to the Governor and Legislature of the State of Delaware and the Governor and Legislature of the State of New Jersey a complete and detailed report of the following:

- (1) its operations and accomplishments during the completed fiscal year;
- (2) its receipts and disbursements or revenues and expenses during that year in accordance with the categories and classifications established by the authority for its own operating and capital outlay purposes;
- (3) its assets and liabilities at the end of the fiscal year, including the status of reserve, depreciation, special or other funds including debits and credits of these funds;
- (4) a schedule of bonds and notes outstanding at the end of the fiscal year;
- (5) a list of all contracts exceeding \$100,000 entered into during the fiscal year;
- (6) a business or strategic plan for the authority and for each of its operating divisions;
- (7) a capital plan containing specific goals and objectives including, but not limited to, economic development goals and objectives in the State of Delaware and in the New Jersey counties of Cape May, Cumberland, Gloucester and Salem; and
- (8) the authority's progress toward meeting the prior year's economic development goals and objectives.

ARTICLE XXI BOUNDARIES UNAFFECTED

The existing territorial or boundary lines of the states, or the jurisdiction of the two states established by said boundary lines, shall not be changed hereby.

ARTICLE XXII ENVIRONMENTAL PROTECTION

a. The planning, development, construction and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resource laws, now or hereafter enacted, or promulgated by the state in which the project, or any part thereof, is located.

b. The planning, development, construction and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, subaqueous land laws or natural resource laws, now or hereafter enacted or promulgated by either state.

c. The planning, development, construction and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware

Code, as in effect on January 1, 1989. Nothing in this compact shall be deemed to preempt, modify or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

d. The planning, development, construction and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including, but not limited to, "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.) and the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.).

C.32:11E-1.10 Adoption of revised policies relative to open public records, meetings.

2. The authority shall revise its policies concerning open public records and open public meetings after undertaking a review of the current statutes in each of the two states in this regard. The authority shall adopt policies that reflect the more stringent standard as codified by the current law on this topic in either the State of Delaware or the State of New Jersey.

3. This act shall take effect immediately, but shall remain inoperative until passage by the State of Delaware of legislation having substantially similar effect as this act; but if such legislation already has been enacted, this act shall take effect immediately.

Approved November 21, 2003.

CHAPTER 193

AN ACT establishing the Mandated Health Benefits Advisory Commission and supplementing Title 17B of the New Jersey Statutes.

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

C.17B:27D-1 Findings, declarations relative to mandated health benefits.

1. The Legislature finds and declares that:
 - a. Health benefits coverage, while providing important protection for individuals, is costly for individuals and businesses that insure their employees;
 - b. Mandated health benefits have social, financial and medical implications for patients, providers and health benefits plans; and
 - c. It is, therefore, in the public interest to conduct a review of proposed mandated health benefits by an expert body to provide the Legislature with adequate and independent documentation defining the social and financial impact and medical efficacy of the proposed mandate.

C.17B:27D-2 Definitions relative to mandated health benefits.

2. As used in this act:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State.

"Commission" means the Mandated Health Benefits Advisory Commission established pursuant to this act.

"Health benefits plan" means a benefits plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier. For the purposes of this act, health benefits plan shall not include the following plans, policies or contracts: accident only, credit, disability, long-term care, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) or hospital confinement indemnity coverage.

"Mandated health benefit" or "mandate" means: a benefit or coverage that is required by law to be provided by a carrier and includes: coverage for specific health care services, treatments or practices; or direct reimbursement to specific health care providers.

C.17B:27D-3 Mandated Health Benefits Advisory Commission.

3. There is established the Mandated Health Benefits Advisory Commission to study the social, financial and medical impact of proposed mandated health benefits.

C.17B:27D-4 Membership; terms; vacancies.

4. The commission shall consist of 17 voting members as follows: the Commissioners of Health and Senior Services, Human Services and Banking and Insurance or their designees, who shall serve ex officio; three public members appointed by the President of the Senate, who shall include a representative of a commercial health insurance company, a physician licensed in this State who is a member of the Medical Society of New Jersey, and a representative of the New Jersey Business and Industry Association, no more than two of whom shall be from the same political party; three public members appointed by the Speaker of the General Assembly, who shall include a representative of a health service corporation, a physician licensed in this State, and a representative of organized labor, no more than two of whom shall be from the same political party; and eight public members appointed by the Governor, who shall include a medical educator from the University of Medicine and Dentistry of New Jersey whose major field of expertise is the study and evaluation of the cost of health care and health insurance, a representative of the New Jersey Association of Health Plans, a representative of the New Jersey Hospital Association, a representative of the New Jersey

State Nurses Association, a representative of the New Jersey Dental Association, a representative of a consumer advocacy organization and two representatives of the general public who are knowledgeable about health benefits plans.

The President of the Senate may appoint two members of the Senate, no more than one of whom shall be from the same political party, to serve as nonvoting members of the commission. The Speaker of the General Assembly may appoint two members of the General Assembly, no more than one of whom shall be from the same political party, to serve as nonvoting members of the commission. The legislative members shall serve during their legislative term of office.

Of the voting members first appointed, four shall serve for a term of two years, four for a term of three years and three for a term of four years.

Voting members appointed thereafter shall serve four-year terms, and any vacancy shall be filled by appointment for the unexpired term only. A member is eligible for reappointment. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

C.17B:27D-5 Election of chairman, vice chairman, appointment of secretary; meetings.

5. a. The commission shall organize and hold its first meeting within 90 days after the appointment of its members and shall elect a chairman and a vice chairman from among its members. The commission may appoint a secretary, who need not be a member of the commission.

b. The members of the commission shall serve without compensation but may be allowed their actual and necessary expenses incurred in the performance of their duties within the limits of funds appropriated or otherwise made available to the commission for this purpose.

c. The Department of Banking and Insurance, in consultation with the Department of Health and Senior Services, shall assist the commission in the performance of its duties.

d. The commission shall be entitled to call upon the services of any State, county or municipal department, board, commission or agency as it may require and as may be available to it for these purposes, and to incur such traveling and other miscellaneous expenses as it may deem necessary for the proper execution of its duties and as may be within the limit of funds appropriated or otherwise made available to it for these purposes.

e. The commission shall meet regularly, and at a minimum of four times per year. Special meetings may be called by the chairman of the commission.

C.17B:27D-6 Duties of commission relative to review of bills.

6. It shall be the duty of the commission to review any bill introduced in either House of the Legislature that would require a carrier to provide a mandated health benefit, as provided in this section.

a. Whenever a bill containing a mandated health benefit is introduced in the Legislature, the chairman of the standing reference committee to which the bill has been referred in the House in which it was introduced shall, upon introduction of the bill, request the commission to prepare a written report that assesses the social and financial effects and the medical efficacy of the proposed mandated health benefit.

If the bill is subsequently amended, a prime sponsor or the presiding officer of the House in which the bill is pending may request the commission to amend or revise its report to reflect the changes made by the amendment.

b. (1) For the period ending December 31, 2003, the commission shall complete its review of a bill within 90 days after the date the review is requested, and provide its comments and recommendations in writing to the prime sponsor, committee chairman and presiding officer of the House in which the bill is pending. The commission may request an extension prior to the 90th day, in which case the presiding officer of the House in which the bill is pending may grant an extension of up to 45 days for the commission to complete its review.

(2) Beginning January 1, 2004, the commission shall complete its review of a bill within 60 days after the date the review is requested, and provide its comments and recommendations in writing to the prime sponsor, committee chairman and presiding officer of the House in which the bill is pending. The commission may request an extension prior to the 60th day, in which case the presiding officer of the House in which the bill is pending may grant an extension of up to 45 days for the commission to complete its review.

c. The House or standing reference committee, as applicable, shall not consider or vote upon the bill until either: (1) the commission completes its review and provides its comments and recommendations in writing to the prime sponsor, committee chairman and presiding officer of the House in which the bill is pending, or (2) the 90th or 60th day, as applicable, after the date the review is requested, if no extension was granted, or the designated day for the end of the extension period, whichever is later.

d. (1) If the presiding officer of the House in which the bill is pending determines that the bill is an urgent matter, the presiding officer shall so notify in writing the commission and the chairman of the standing reference committee to which the bill was referred, and the House or committee may consider and vote upon the bill as soon as practicable.

(2) If the chairman of the standing reference committee to which the bill is referred, in consultation with the Commissioner of Health and Senior Services, determines that the bill is of such an urgent nature that it would seriously impair the public health to wait for the commission to issue its report, the chairman shall so notify in writing the presiding officer of the House in which the bill is pending, and the commission, of that determination, and the

standing reference committee, with the agreement of the presiding officer of the House, may consider and vote upon the bill as soon as practicable.

C.17B:27D-7 Contents of review of bill.

7. The review of a bill containing a proposed mandated health benefit by the commission shall include the following:

a. The social impact of mandating the health benefit, which shall include:

(1) the extent to which the proposed mandated health benefit and the services it would provide are needed by, available to and utilized by the population of New Jersey;

(2) the extent to which insurance coverage for the proposed mandated health benefit already exists or, if no coverage exists, the extent to which the lack of coverage results in inadequate health care or financial hardship for the affected population of New Jersey;

(3) the demand for the proposed mandated health benefit from the public and the source and extent of opposition to mandating the health benefit;

(4) relevant findings bearing on the social impact of the lack of the proposed mandated health benefit; and

(5) such other information with respect to the social impact as the commission deems appropriate.

b. The financial impact of mandating the health benefit, which shall include:

(1) the extent to which the proposed mandated health benefit would increase or decrease the cost for treatment or service;

(2) the extent to which similar mandated health benefits in other states have affected charges, costs and payments for services;

(3) the extent to which the proposed mandated health benefit would increase the appropriate use of the treatment or service;

(4) the impact of the proposed mandated health benefit on total costs to carriers and on administrative costs;

(5) the impact of the proposed mandated health benefit on total costs to purchasers and benefit costs;

(6) the impact of the proposed mandated health benefit on the total cost of health care within New Jersey; and

(7) such other information with respect to the financial impact as the commission deems appropriate.

c. The medical efficacy of mandating the health benefit, which shall include:

(1) if the proposed health benefit mandates coverage of a particular treatment or therapy, the recommendation of a clinical study or review article in a major peer-reviewed professional journal;

(2) if the proposed benefit mandates coverage of the services provided by an additional class of practitioners, the results of at least one professionally accepted, controlled trial comparing the medical results achieved by the additional class of practitioners and the practitioners already covered by benefits;

(3) the results of other research;

(4) the impact of the proposed benefit on the general availability of health benefits coverage in New Jersey; and

(5) such other information with respect to the medical efficacy as the commission deems appropriate.

d. The effects of balancing the social, economic and medical efficacy considerations, which shall include, but not be limited to:

(1) the extent to which the need for coverage outweighs the costs of mandating the health benefit; and

(2) the extent to which the problem of coverage may be solved by mandating the availability of the coverage as an option under a health benefits plan.

e. An analysis of information collected from various sources, including, but not limited to:

(1) a State data collection system;

(2) the Departments of Health and Senior Services and Banking and Insurance;

(3) health planning organizations;

(4) proponents and opponents of the proposed health benefit mandate, who shall be encouraged to provide appropriate documentation supporting their positions. The commission shall examine such documentation to determine whether:

(a) the documentation is complete;

(b) the assumptions upon which the research is based are valid;

(c) the research cited in the documentation meets professional standards;

(d) all relevant research respecting the proposed benefit has been cited in the documentation;

(e) the conclusions and interpretations in the documentation are consistent with the data submitted; and

(5) such other data sources as the commission deems appropriate.

In analyzing information from the various sources, the commission shall give substantial weight to the documentation provided by the proponents and opponents of the mandate to the extent that such documentation is made available to them.

C.17B:27D-8 Development of system of data collection; review, comment.

8. In the course of studying and evaluating proposed mandated health benefits, the commission shall:

a. develop criteria for a system and program of data collection, for use by the Departments of Health and Senior Services and Banking and Insurance, to assess the impact of mandated health benefits, including the cost to employers and carriers, impact of treatment, cost savings in the health care system, number of providers and other data as may be appropriate; and

b. review and comment to any State department, board, bureau, commission or agency, with respect to any order or regulations proposed or implemented thereby that affect mandated health benefits.

C.17B:27D-9 Report to Governor, Legislature.

9. The commission shall report to the Governor and Legislature three years from the effective date of this act on its activities. The report shall include a summary of the bills reviewed by the commission and the commission's findings, and any recommendations the commission may have regarding the review process required pursuant to this act.

10. This act shall take effect immediately.

Approved November 21, 2003.

CHAPTER 194

AN ACT expanding the economic development incentives for municipal rehabilitation and economic recovery in certain fiscally distressed municipalities, amending P.L.2002, c.43.

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

1. Section 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended to read as follows:

C.52:27BBB-53 Definitions relative to open for business incentives.

54. As used in this section and section 55 of P.L.2002, c.43 (C.52:27BBB-54):

a. "Business facility" means any factory, mill, plant, refinery, warehouse, building, complex of buildings or structural components of buildings, and all machinery, equipment and personal property located within a qualified municipality, used in connection with the operation of the business of a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c.162 (C.54:10A-5) or the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, and all facility preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

b. "Business relocation or business expansion property" means improvements to real property and tangible personal property, but only if that improvement or personal property is constructed or purchased and placed in service or use by the taxpayer, for use as a component part of a new business facility or expanded business facility located in a qualified municipality.

(1) Business relocation or business expansion property shall include only:

(a) improvements to real property placed in service or use as a business facility by the taxpayer on or after the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality;

(b) tangible personal property placed in service or use by the taxpayer on or after the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality, with respect to which depreciation, or amortization in lieu of depreciation, is allowable for federal income tax purposes and which has a remaining recovery period of three or more years at the time the property is placed in service or use in a qualified municipality; or

(c) tangible personal property owned and used by the taxpayer at a business location outside a qualified municipality which is moved into a qualified municipality on or after the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality, for use as a component part of a new or expanded business facility located in the qualified municipality; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in a qualified municipality.

(2) Property purchased for business relocation or expansion shall not include:

(a) repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(b) airplanes;

(c) property which is primarily used outside a qualified municipality with that use being determined based upon the amount of time the property is actually used both within and without the qualified municipality;

(d) property which is acquired incident to the purchase of the stock or assets of the seller.

(3) Property shall be deemed to have been purchased prior to a specified date only if:

(a) the physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date; or

(b) the machinery or equipment was owned by the taxpayer prior to the specified date, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date.

c. "Business relocation or business expansion" means capital investment in a new or expanded business facility in a qualified municipality.

d. "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

e. "Director" means the Director of the Division of Taxation in the Department of the Treasury.

f. "Expanded business facility" means any business facility, other than a new business facility, resulting from acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the effective date of rehabilitation and economic recovery.

g. "Incentive payment" means: the amount of tax owed by a taxpayer for a privilege period or reporting period, as computed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or section 7 of P.L.2002, c.40 (C.54:10A-5a), or sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), or section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, multiplied for each privilege period or reporting period by a fraction, the numerator of which is the average value of the taxpayer's business relocation or business expansion property within a qualified municipality during the period covered by its report, and the denominator of which is the average value of all the taxpayer's real and tangible personal property, excluding improvements made after the date of a taxpayer's first acquisition of business relocation or business expansion property in the qualified municipality to business facilities in existence on that date outside of the qualified municipality, in New Jersey during such period which result is multiplied by 96 percent; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value whether the corporation is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), the tax imposed

pursuant to section 1 of P.L.1950, c.231 (C.17:32-15) or the tax imposed pursuant to N.J.S.17B:23-5; and provided further that the value of a leasehold interest in realty located within a qualified municipality shall be based on no less than the fair market value of its rent; and provided further that incentive payments shall be made for a period not to exceed 10 years, commencing on the date of a taxpayer's first acquisition of business relocation or business expansion property in the qualified municipality following the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality.

h. "New business facility" means a business facility which:

(1) is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.) or pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5. A business facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(2) is purchased by a taxpayer and is placed in service or use on or after the effective date of rehabilitation and economic recovery;

(3) was not purchased by a taxpayer from a related person; and

(4) was not in service or use during the 90-day period immediately prior to transfer of the title to the facility.

i. "Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

j. "Purchase" means, with respect to the determination of whether business relocation or business expansion property was purchased, any acquisition of property, including an acquisition pursuant to a lease, and an acquisition pursuant to a lease under which the lessee or affiliates of the lessee are the primary occupants under a lease of ten years or more, but only if:

(1) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;

(2) the property is not acquired by one member of a controlled group from another member of the same controlled group; and

(3) the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(a) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(b) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

k. "Related person" means:

(1) a corporation, partnership, association or trust controlled by the taxpayer;

(2) an individual, corporation, partnership, association or trust that is in control of the taxpayer;

(3) a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(4) a member of the same controlled group as the taxpayer.

2. Section 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended to read as follows:

C.52:27BBB-54 "Qualified Municipality Open for Business Incentive Program."

55. a. There is established in the authority the "Qualified Municipality Open for Business Incentive Program," the purpose of which is to foster business investment in qualified municipalities. Businesses that locate or expand in a qualified municipality during the period that the municipality is under rehabilitation and economic recovery shall be eligible to receive a rebate from the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5 as provided herein.

b. For each year in which a taxpayer is eligible for a rebate of a portion of the incentive payment, the Director of the Division of Taxation shall certify to the State Treasurer (1) that the taxpayer's corporation business tax return or insurance premiums tax return has been filed; (2) that the taxpayer's entire corporation business tax obligation or insurance premiums tax obligation has been satisfied; and (3) the amount of the taxpayer's incentive payment entitlement. Upon such certification, the treasurer shall certify to the executive director of the authority the amount of the taxpayer's incentive payment and, subject to the approval of the Director of the Division of Budget and Accounting, transfer that incentive payment to the fund established with the proceeds of those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43.

c. The executive director of the authority shall rebate to the taxpayer up to 75% of the incentive payment paid by the taxpayer and placed by the treasurer into a fund established using those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate within two years of deposit of the incentive payment into the fund and

establishes to the satisfaction of the executive director of the authority that the taxpayer will utilize those monies for business relocation or business expansion property that will be placed in service or use by the taxpayer after the date of the rebate application. The authority may rebate to the taxpayer up to 100% of the incentive payment paid by the taxpayer and placed by the treasurer into a fund established using those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate and the authority determines that a particular business relocation or business expansion will more effectively contribute to the municipal rehabilitation and economic recovery in a qualified municipality as sought by the Legislature through the enactment of P.L.2002, c.43. In making this determination the authority shall consider: 1) the amount of private investment, 2) the number of jobs concerned, 3) the projected average salary of the employees, 4) whether the investment has the potential to attract additional investment, 5) the impact to the State Treasury, and 6) any other factors that uniquely contribute to the municipal rehabilitation and economic recovery of the qualified municipality. The taxpayer may apply for this incentive prior to its undertaking of the business relocation or business expansion and upon approval the authority may establish a rebate schedule for the incentive payment for a period not to exceed ten years, subject to the taxpayer's continued satisfaction of the criteria of this act and to annual appropriation. The cumulative amount of monies distributed to the taxpayer pursuant to this section shall not exceed the amount paid or to be paid by the taxpayer for the business relocation or business expansion property. In the event that the taxpayer does not establish its eligibility for a rebate of a portion of the incentive payment within two years of its deposit into the fund, the fund shall retain any remaining amount of the incentive payment.

3. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended to read as follows:

C.52:27BBB-55 Application for CBT or insurance tax credit, certain, for new positions.

56. a. A taxpayer engaged in the conduct of business within a qualified municipality and who is not receiving a benefit under the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), may apply to receive a tax credit against the amount of tax otherwise imposed under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, equal to: \$2,500 for each new full-time position at that location in credit year one and \$1,250 for each new full-time position at that location in credit year two.

b. (1) The credit pursuant to subsection a. of this section for credit year one shall be allowed for the privilege period or reporting period in which or with which credit year one ends; the credit pursuant to subsection a. of this section for credit year two shall be allowed for the privilege period or reporting period in which or with which credit year two ends.

(2) An unused credit may be carried forward, if necessary, for use in the privilege periods or reporting periods following the privilege period or reporting period for which the credit is allowed.

(3) The order of priority of the application of the credit allowed under this section and any other credits allowed by law shall be as prescribed by the Director of the Division of Taxation. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L. 1945, c.162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law, shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c.162.

c. (1) Notwithstanding the provisions of subsection b. of this section to the contrary, the credit allowed for credit year one may be refundable at the close of the privilege period or reporting period in which or with which credit year two ends, pursuant to the requirements and limitations of this subsection.

(2) That amount of the credit received for credit year one remaining, if any, after the liabilities for the privilege period or reporting period in which or with which credit year two ends and for any prior period have been satisfied, multiplied by the sustained effort ratio, shall be an overpayment for the purposes of section R.S.54:49-15 for the period in which or with which credit year two ends; that amount of the credit received for credit year one remaining, if any, that is not an overpayment pursuant to this paragraph may be carried forward pursuant to subsection b. of this section.

d. The burden of proof shall be on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the credits or refund allowed pursuant to this section. The director shall by regulation establish criteria for the determination of when new or expanded operations have begun at a location. No taxpayer shall be allowed more than a single 24-month continuous period in which credits shall be allowed for activity at a location within a qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

e. For the purposes of this section:

"Credit year one" means the first twelve calendar months following initial or expanded operations at a location within a qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

"Credit year two" means the twelve calendar months following credit year one.

"Employee of the taxpayer" does not include an individual with an ownership interest in the business, that individual's spouse or dependants, or that individual's ancestors or descendants.

"Full time position" means a position filled by an employee of the taxpayer for at least 140 hours per month on a permanent basis, which does not include employment that is temporary or seasonal.

"New full time position" means a position that did not exist prior to credit year one. New full time positions shall be measured by the increase, from the twelve-month period preceding credit year one to the measured credit year, in the average number of full-time positions and full-time position equivalents employed by the taxpayer at the location within a qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). The hours of employees filling part-time positions shall be aggregated to determine the number of full-time position equivalents.

"Part-time position" means a position filled by an employee of the taxpayer for at least 20 hours per week for at least three months during the credit year.

"Sustained effort ratio" means the proportion that the credit year two new full-time positions bears to the credit year one new full-time positions, not to exceed one.

4. This act shall take effect immediately, and apply to privilege periods and reporting periods beginning on or after June 30, 2002.

Approved November 21, 2003.

CHAPTER 195

AN ACT concerning tobacco product manufacturer signatories to a master settlement agreement and supplementing Title 52 of the Revised Statutes.

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

C.52:4D-13 Findings, declarations relative to tobacco Master Settlement Agreement; maximum total appeal bond.

1. a. The Legislature finds and declares that:

(1) New Jersey receives hundreds of millions of dollars annually as a result of the Master Settlement Agreement. These funds have been used to provide important services for the citizens of the State, including tobacco-use prevention, elder care, pharmaceutical assistance, health insurance for the working poor, cancer research, and school renovation and construction. If

this reliable revenue stream were jeopardized, the State might be forced to cut many vital services and programs.

(2) Recent jury verdicts in private litigation against tobacco manufacturers who were signatories to the Master Settlement Agreement have resulted in a \$145 billion class action judgment, which is on appeal, and other large judgments. A plaintiff can typically collect such judgments while an appeal is proceeding, meaning that a defendant's assets can be taken even while it appeals.

(3) A defendant can prevent a plaintiff from taking its assets while it appeals in two ways, by posting a bond under State law or by declaring bankruptcy. If a tobacco company faced with a large judgment could not afford to post a bond under State law it might be forced to declare bankruptcy, and this could interrupt the flow of payments to the State under the Master Settlement Agreement. This would hurt the residents of New Jersey.

(4) New Jersey law requires a defendant to post a bond at least equal to the full amount of the judgment. This may not be possible for the signatories to the Master Settlement Agreement in light of the size of the judgments they are facing. The Legislature finds that it is strongly in the public interest to ensure that a Master Settlement Agreement signatory has access to a full appeal of an adverse judgment before its financial soundness, and its payments to the State, are threatened by the judgment, and thus to ensure that a Master Settlement Agreement signatory is not forced into bankruptcy due to its inability to post a bond pending appeal of an adverse judgment. In furtherance of this compelling public interest the Legislature finds that a maximum appeal bond should be established for cases involving Master Settlement Agreement signatories, successors and affiliates.

(5) The Legislature declares that nothing in this act, P.L.2003, c.195 (C.52:4D-13), is intended to affect the liability of a tobacco manufacturer in any litigation. This act merely ensures that a Master Settlement Agreement signatory, a successor of a signatory, or any affiliate of a signatory, can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will protect not only New Jersey but all states participating in the Master Settlement Agreement by preserving the uninterrupted flow of tobacco settlement revenues.

b. In order to secure and protect the monies to be received as a result of the Master Settlement Agreement, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), in civil litigation under any legal theory involving a signatory, a successor of a signatory, or any affiliate of a signatory to the Master Settlement Agreement, the appeal bond to be furnished during the pendency of all appeals or discretionary reviews by any appellate courts in order to stay the execution of any judgment granting legal, equitable or other relief during the entire course of appellate review shall be set in accordance with applicable laws or court

rules, except that the total appeal bond that is required of all appellants collectively shall not exceed \$50,000,000, regardless of the value of the judgment.

c. Notwithstanding subsection b. of this section, if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that:

- (1) are necessary to protect the appellee; and
- (2) require the appellant to post a bond in an amount up to the total amount of the judgment.

2. This act shall take effect immediately and shall apply to all cases pending or filed on or after its effective date.

Approved November 21, 2003.

CHAPTER 196

AN ACT concerning certain hazardous discharge sites, and supplementing P.L.1977, c.74 (C.58:10A-1 et seq.).

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

C.58:10A-6.4 Definitions relative to certain hazardous discharge sites.

1. As used in P.L.2003, c.196 (C.58:10A-6.4 et seq.):

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. "Discharge" includes the release of any pollutant into a municipal treatment works;

"Municipal treatment works" means the treatment works of any municipal, county, or State agency or any agency or subdivision created by one or more municipal, county or State governments and the treatment works of any public utility as defined in R.S.48:2-13;

"Treatment works" means any device or systems, whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and

other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. "Treatment works" includes any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems; and

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

C.58:10A-6.5 Discharge of untreated, pre-treated wastewater, prohibited in certain municipalities.

2. a. The operator of a hazardous discharge site in the State that is: (1) situated within a municipality of the second class which is located within a county of the second class with a population density of 2,289.4 persons per square mile, according to the latest federal decennial census; (2) a former landfill; and (3) that is included on the National Priorities List of hazardous discharge sites adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.) shall not discharge any untreated or pre-treated wastewater into a publicly owned municipal treatment works for treatment and subsequent release into the waters of the State or into any municipal utility sewer line or storm drain line for subsequent release into the waters of the State.

b. The owner or operator of a publicly owned municipal treatment works or municipal utility sewer line or storm drain line shall not accept any untreated or pre-treated wastewater discharged from a former landfill in the State that is situated within a municipality of the second class which is located within a county of the second class with a population density of 2,289.4 persons per square mile, according to the latest federal decennial census and that is a hazardous discharge site included on the National Priorities List of hazardous discharge sites adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.).

3. The Department of Environmental Protection, in consultation with the United States Environmental Protection Agency, shall, within six months after the date of enactment of P.L.2003, c.196 (C.58:10A-6.4 et seq.), conduct a study re-evaluating the existing standards for discharges of untreated or pre-treated wastewater from former landfills in the State that are hazardous discharge sites included on the National Priorities List of hazardous discharge sites adopted

by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.). The department shall, within three months after completion of the study, prepare and transmit a written report of its findings and conclusions, together with any recommendations for legislative or administrative action, to the Governor, the President of the Senate, the Speaker of the General Assembly, and the chairpersons of the Senate Environment Committee, Assembly Environment Committee, and Assembly Agriculture and Natural Resources Committee, or their successors.

C.58:10A-6.6 Regulations relative to handling of radionuclides.

4. If there are radionuclides in or about the waters at or near a former landfill that is situated within a municipality of the second class which is located within a county of the second class with a population density of 2,289.4 persons per square mile, according to the latest federal decennial census and that is a hazardous discharge site subject to the requirements of section 2 of P.L.2003, c.196 (C.58:10A-6.5), the operator of the hazardous discharge site shall:

a. Construct an on-site treatment facility designed to remediate the former landfill so that the treated wastewater is environmentally safe for discharge to the groundwater on-site, as part of a comprehensive on-site treatment program which shall also include remedial treatment for the radionuclides in or about the waters at or near the former landfill;

b. Make available to the public free of charge the results of the testing for any pollutants at the site immediately upon their production;

c. In conjunction with appropriate officials of the Department of Environmental Protection and, if applicable, the federal government, hold regular monthly public meetings concerning the remediation so that the public may be apprised of the progress of the remediation plan, the treatment options being proposed and considered, the cost for the various treatment options being considered, the content and concentrations of the various pollutants existing at the site, the time-frame for completion of construction of any treatment facility, and the time-frame for the completion of the remediation; and

d. For the purpose of engendering public trust in the cleanup process, give a public accounting of the funds that have been spent to remediate the site, which shall include providing the costs and expenditures associated with constructing and operating the treatment facility and with designing and operating the facility to also treat radionuclides, as well as any other costs and expenditures associated with the remediation.

5. This act shall take effect immediately.

Approved December 16, 2003.

CHAPTER 197

AN ACT concerning the qualifications of certain persons as veterans for certain purposes, amending various parts of the statutory law.

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

1. N.J.S.11A:5-1 is amended to read as follows:

Definitions.

11A:5-1. Definitions. As used in this chapter:

a. "Disabled veteran" means any veteran who is eligible to be compensated for a service-connected disability from war service by the United States Veterans Administration or who receives or is entitled to receive equivalent compensation for a service-connected disability which arises out of military or naval service as set forth in this chapter and who has submitted sufficient evidence of the record of disability incurred in the line of duty to the Adjutant General of the Department of Military and Veterans' Affairs on or before the closing date for filing an application for an examination;

b. "Veteran" means any honorably discharged soldier, sailor, marine or nurse who served in any army or navy of the allies of the United States in World War I, between July 14, 1914 and November 11, 1918, or who served in any army or navy of the allies of the United States in World War II, between September 1, 1939 and September 2, 1945 and who was inducted into that service through voluntary enlistment, and was a citizen of the United States at the time of the enlistment, and who did not renounce or lose his or her United States citizenship; or any soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has been discharged or released under other than dishonorable conditions from that service in any of the following wars or conflicts and who has presented to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of the record of service on or before the closing date for filing an application for an examination:

(1) World War I, between April 6, 1917 and November 11, 1918;

(2) World War II, on or after September 16, 1940, who shall have served at least 90 days beginning on or before December 31, 1946 in such active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies; except that any person receiving an actual service-incurred injury

or disability shall be classed a veteran whether or not that person has completed the 90-day service;

(3) Korean conflict, on or after June 23, 1950, who shall have served at least 90 days beginning on or before January 31, 1955, in active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies; except that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service;

(4) Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(5) Vietnam conflict, on or after December 31, 1960, who shall have served at least 90 days beginning on or before May 7, 1975, in active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies, and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, or exclusive of any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; except that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as provided;

(6) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(7) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(8) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(9) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(10) Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

(11) Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such

active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement;

(12) Operation "Uphold Democracy" in Haiti, on or after September 19, 1994, who served in Haiti or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1995, and who received an Armed Forces Expeditionary Medal for such service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided or received an Armed Forces Expeditionary Medal;

(13) Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided; and

(14) Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

c. "War service" means service by a veteran in any war or conflict described in this chapter during the periods specified.

2. N.J.S.18A:66-2 is amended to read as follows:

Definitions.

18A:66-2. As used in this article:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by or in behalf of the member, including interest credited to January 1, 1956, standing to the credit of the member's individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this article.

c. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this article.

d. "Compensation" means the contractual salary, for services as a teacher as defined in this article, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular school day or the regular school year.

e. "Employer" means the State, the board of education or any educational institution or agency of or within the State by which a teacher is paid.

f. "Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

g. "Fiscal year" means any year commencing with July 1, and ending with June 30, next following.

h. "Pension" means payments for life derived from appropriations made by the State or employers to the Teachers' Pension and Annuity Fund.

i. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, granted under the provisions of this article, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

j. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted to a member from the Teachers' Pension and Annuity Fund, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

k. "Present-entrant" means any member of the Teachers' Pension and Annuity Fund who had established status as a "present-entrant member" of said fund prior to January 1, 1956.

l. "Rate of contribution initially certified" means the rate of contribution certified by the retirement system in accordance with N.J.S.18A:66-29.

m. "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

n. "Retirement allowance" means the pension plus the annuity.

o. "School service" means any service as a "teacher" as defined in this section.

p. "Teacher" means any regular teacher, special teacher, helping teacher, teacher clerk, principal, vice-principal, supervisor, supervising principal, director, superintendent, city superintendent, assistant city superintendent, county superintendent, State Commissioner or Assistant Commissioner of Education, members of the State Department of Education who are certificated, unclassified professional staff and other members of the teaching or professional staff of any class, public school, high school, normal school, model school, training school, vocational school, truant reformatory school, or parental school, and of any and all classes or schools within the State conducted under the order and superintendence, and wholly or partly at the expense of the State Board of Education, of a duly elected or appointed board of education, board of school directors, or board of trustees of the State or of any school district or normal school district thereof, and any persons under contract or engagement to perform one or more of these functions. It shall also mean any person who serves, while on an approved leave of absence from regular duties as a teacher, as an officer of a local, county or State labor organization which represents, or is affiliated with an organization which represents, teachers as defined in this subsection. No person shall be deemed a teacher within the meaning of this article who is a substitute teacher. In all cases of doubt the board of trustees shall determine whether any person is a teacher as defined in this article.

q. "Teachers' Pension and Annuity Fund," hereinafter referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this article, including the several funds placed under said system. By that name all its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

r. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the

Allies of the United States in World War I between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided; and provided further that any member classed as a veteran pursuant to this subsection prior to August 1, 1966, shall continue to be classed as a veteran, whether or not that person completed the 90-day service between said dates as herein provided;

(12) Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(13) Vietnam conflict, on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided;

(14) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active

service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(17) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(18) Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability

shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

(19) Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement;

(20) Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided; and

(21) Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

s. "Child" means a deceased member's unmarried child either (a) under the age of 18 or (b) of any age who, at the time of the member's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

t. "Widower" means the man to whom a member was married at least five years before the date of her death and to whom she continued to be married

until the date of her death and who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

u. "Widow" means the woman to whom a member was married at least five years before the date of his death and to whom he continued to be married until the date of his death and who was receiving at least one-half of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow will be considered terminated by the marriage of the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

v. "Parent" means the parent of a member who was receiving at least one-half of the parent's support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

w. "Medical board" means the board of physicians provided for in N.J.S.18A:66-56.

3. Section 6 of P.L.1954, c.84 (C.43:15A-6) is amended to read as follows:

C.43:15A-6 Definitions.

6. As used in this act:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by or on behalf of the member, standing to the credit of the member's individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this act.

c. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, granted under the provisions of this act, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

d. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this act.

e. "Child" means a deceased member's unmarried child either (1) under the age of 18 or (2) of any age who, at the time of the member's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

f. "Parent" shall mean the parent of a member who was receiving at least 1/2 of the parent's support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

g. "Widower" means the man to whom a member was married at least five years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least 1/2 of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

h. "Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

i. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.

j. "Medical board" shall mean the board of physicians provided for in section 17 (C.43:15A-17).

k. "Pension" means payments for life derived from appropriations made by the employer as provided in this act.

l. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted under the provisions of this act, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

m. "Public Employees' Retirement System of New Jersey," hereinafter referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this act including the several funds placed under said

system. By that name all of its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

n. "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of the assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

o. "Retirement allowance" means the pension plus the annuity.

p. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I, between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided; and provided further, that any member classed as a veteran pursuant to this paragraph prior to August 1, 1966, shall continue to be classed as a veteran whether or not that person completed the 90-day service between said dates as herein provided;

(12) Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(13) Vietnam conflict on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of

any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90 days' service as herein provided;

(14) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(17) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days

commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(18) Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

(19) Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement;

(20) Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided; and

(21) Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged

in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

q. "Widow" means the woman to whom a member was married at least five years before the date of his death and to whom he continued to be married until the date of his death and who was receiving at least 1/2 of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow will be considered terminated by the marriage of the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

r. "Compensation" means the base or contractual salary, for services as an employee, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular workday or the regular work year. In cases where salary includes maintenance, the retirement system shall fix the value of that part of the salary not paid in money which shall be considered under this act.

4. Section 1 of P.L.1983, c.391 (C.43:16A-11.7) is amended to read as follows:

C.43:16A-11.7 Definition of veteran.

1. For purposes of this act "veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I, between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided; and provided further, that any member classed as a veteran pursuant to this subparagraph prior to August 1, 1966, shall continue to be classed as a veteran whether or not the member completed the 90-day service between said dates as herein provided;

(12) Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(13) Vietnam conflict on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511 (d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90 days' service as herein provided;

(14) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(17) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(18) Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

(19) Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement;

(20) Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided; and

(21) Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

5. Section 1 of P.L.1963, c.171 (C.54:4-8.10) is amended to read as follows:

C.54:4-8.10 Definitions.

1. (a) "Active service in time of war" means active service at some time during one of the following periods:

Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service

commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement;

Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States

or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Vietnam conflict, December 31, 1960, to May 7, 1975;

The Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

The Korean conflict, June 23, 1950 to January 31, 1955;

World War II, September 16, 1940 to December 31, 1946;

World War I, April 6, 1917 to November 11, 1918, and in the case of service with the United States military forces in Russia, April 6, 1917 to April 1, 1920;

Spanish-American War, April 21, 1898 to August 13, 1898;

Civil War, April 15, 1861 to May 26, 1865; or, as to any subsequent war, during the period from the date of declaration of war to the date on which actual hostilities shall cease.

(b) "Assessor" means the assessor, board of assessors or any other official or body of a taxing district charged with the duty of assessing real and personal property for the purpose of general taxation.

(c) "Collector" means the collector or receiver of taxes of a taxing district.

(d) "Honorably discharged or released under honorable circumstances from active service in time of war," means and includes every form of separation from active, full-time duty with military or naval pay and allowances in some branch of the Armed Forces of the United States in time of war, other than those marked "dishonorable," "undesirable," "bad conduct," "by sentence of general court martial," "by sentence of summary court martial" or similar expression indicating that the discharge or release was not under honorable circumstances. A disenrollment certificate or other form of release terminating temporary service in a military or naval branch of the armed forces rendered on a voluntary and part-time basis without pay, or a release from or deferment of induction into the active military or naval service shall not be deemed to be included in the aforementioned phrase.

(e) "Pre-tax year" means the particular calendar year immediately preceding the "tax year."

(f) "Resident" means one legally domiciled within the State of New Jersey. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State for the purposes of this act. Absence from this State for a period of 12 months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing legal domicile within the State shall be upon the claimant.

(g) "Tax year" means the particular calendar year in which the general property tax is due and payable.

(h) "Veteran" means any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States.

(i) "Veteran's deduction" means the deduction against the taxes payable by any person, allowable pursuant to this act.

(j) "Surviving spouse" means the surviving wife or husband of any of the following, while he or she is a resident of this State, during widowhood or widowerhood:

1. A citizen and resident of this State who has died or shall die while on active duty in time of war in any branch of the Armed Forces of the United States; or

2. A citizen and resident of this State who has had or shall hereafter have active service in time of war in any branch of the Armed Forces of the United States and who died or shall die while on active duty in a branch of the Armed Forces of the United States; or

3. A citizen and resident of this State who has been or may hereafter be honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States.

(k) "Cooperative" means a housing corporation or association incorporated or organized under the laws of New Jersey which entitles a shareholder thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by the corporation or association.

(l) "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 section 607 of the "National Defense Housing Act," Pub.L.76-849 (42 U.S.C.s.1521 et seq.), which acquired a National Defense Housing Project pursuant to that act.

6. This act shall take effect immediately, but section 5 shall remain inoperative until January 1 next after enactment.

Approved December 16, 2003.

CHAPTER 198

AN ACT concerning remains of the victims of September 11, 2001.

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

C.32:1-35.52a Findings, declarations relative to remains of victims of September 11, 2001 terrorist attack.

1. The Legislature finds and declares that:

a. The unprovoked attack on the United States carried out by international terrorists on September 11, 2001 against targets in New York City, Washington, D.C. and Arlington, Virginia resulted in the deaths of thousands of innocent people, injury to countless others, and the disruption of innumerable lives.

b. Among the victims of this depraved act were civilian and government workers, military personnel, airline passengers and crew members, police officers, firefighters and paramedics, many of whom resided in this State.

c. The remains of many victims of the World Trade Center attacks were never located.

d. The ash from the World Trade Center site, which contains remains of the victims of September 11, 2001, has been held at Fresh Kills Landfill in Staten Island, New York.

e. This ash should be covered and placed in containers to eventually be transported to the World Trade Center site to become a part of the memorial that will be built at this location.

f. It is fitting and proper for the State to honor the victims of September 11, 2001 by returning their ashes to the site of a memorial at the World Trade Center in their honor.

C.32:1-35.52b Remains to be used in memorial.

2. The Port Authority of New York and New Jersey shall cover the site of the remains of the victims of September 11, 2001 and transport those remains in containers to be used in a memorial at the World Trade Center site that will be built in their honor.

3. This act shall take effect upon the enactment into law by the State of New York of legislation having an identical effect with this act, but if the State of New York has already enacted such legislation, this act shall take effect immediately.

Approved December 24, 2003.

CHAPTER 199

AN ACT concerning criminal history background checks, amending various parts of the statutory law and supplementing Title 40 of the Revised Statutes.

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

1. N.J.S.2B:1-3 is amended to read as follows:

Criminal history record information.

2B:1-3. Criminal History Record Information. The Supreme Court is authorized to receive criminal history record information from the Federal Bureau of Investigation for use in licensing and disciplining attorneys-at-law of this State. Each applicant for licensure shall submit to the Board of Bar Examiners the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The Board of Bar Examiners is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal

history record background check, including all costs of administering and processing the check.

2. Section 14 of P.L.1940, c.17 (C.5:5-34) is amended to read as follows:

C.5:5-34 Requirements for licensure by Racing Commission.

14. No person shall be licensed in any capacity whatsoever by the Racing Commission or employed in any capacity whatsoever at any place, track or enclosure where a horse race meeting is permitted who has been convicted of a crime involving moral turpitude. Each person seeking licensure or employment shall submit to the executive director the person's name, address and written consent for a criminal history record background check to be performed. The applicant shall submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations. The executive director is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. Upon receipt of such notification, the executive director shall make a determination regarding the person's eligibility for licensure or employment. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the executive director in the event a current or prospective licensee or employee, who was the subject of a criminal history record background check pursuant to this section, is convicted of a crime or offense in this State after the date the background check was performed.

3. Section 1 of P.L.1946, c.167 (C.5:5-34.1) is amended to read as follows:

C.5:5-34.1 Ownership of stock, interest in racing corporation; approval, revocation, criminal record background check.

1. Whenever any association or corporation has been or shall be granted a permit to hold or conduct a horse race meeting, no person shall in any manner become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership comprising a five percent or greater interest in such association or corporation without first having obtained the approval of the commission therefor; and the commission may, after hearing, revoke such permit granted to any corporation or association which shall register on its books in the name of any person its shares of stock or certificates or other evidence of ownership of any such interest in such association or corporation without the approval of the commission having first been obtained, or which shall knowingly permit a person to be directly or indirectly interested in these shares of stock or certificates or other evidence of ownership of any

interest in such association or corporation without reporting the same to the commission. Whenever the commission shall give to any person its approval to own or hold these shares of stock or certificates or other evidence of ownership of any such interest in any such association or corporation, it shall by registered mail notify the secretary of such association or corporation of such approval; provided, however, that under no circumstances shall the commission give such approval to any person who has been convicted of a crime involving moral turpitude, or has violated any of the provisions of the racing laws of the State of New Jersey or any rule or regulation of the commission, or has at any time been denied a license or permit of any kind by the commission.

A person seeking approval of the commission to become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership comprising a five percent or greater interest in such association or corporation shall submit the applicant's name, address, and written consent to the executive director for a criminal history record background check to be performed. The executive director is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. Upon receipt of such notification, the executive director shall make a determination regarding the eligibility of the current or prospective owner. The person seeking approval shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the executive director in the event the person seeking approval, who was the subject of a criminal history record background check pursuant to this section, is convicted of a crime or offense in this State after the date the background check was performed.

4. Section 6 of P.L.1954, c.7 (C.5:8-6) is amended to read as follows:

C.5:8-6 Duties of commission.

6. It shall be the duty of the commission to supervise the administration of the Bingo Licensing Law and the Raffles Licensing Law and to adopt, amend and repeal rules and regulations governing the issuance and amendment of licenses thereunder and the holding, operating and conducting of games of chance under such licenses, establishing schedules of rentals or charges which may be paid for the leasing, sale or providing of equipment for use in or in connection with the holding, operating or conducting of any game or games of chance authorized to be held, operated or conducted under the Bingo Licensing Law or the Raffles Licensing Law, and prescribing fees for registrations, licenses and other services provided pursuant to P.L.1954, c.7

(C.5:8-1 et seq.), as amended and supplemented, which shall have the force of law and shall be binding upon all municipalities issuing licenses under either or both of said laws and upon all licensees thereunder and lessors, sellers or providers of equipment to licensees, to the end that such licenses shall be issued to qualified licensees only and that said games of chance shall be fairly and properly conducted for the purposes and in the manner in said laws prescribed and to prevent the games of chance authorized to be conducted by said laws from being conducted for commercial purposes instead of for the purposes authorized in said laws, and in order to provide uniformity in the administration of said laws throughout the State, the commission shall prescribe forms of applications for licenses, licenses, amendment of licenses, reports of the conduct of games and other matters incident to the administration of said laws. The commission shall receive and investigate applications from organizations wishing to hold, operate or conduct any game or games of chance pursuant to the Bingo Licensing Law or the Raffles Licensing Law, as amended and supplemented. If the commission determines that the applicant is a bona fide organization or association of veterans of any war in which the United States has been engaged or a church or a religious congregation or a religious organization or a charitable, educational or fraternal organization, or a civic or service club, or a senior citizen association or club, or an officially recognized volunteer fire company or an officially recognized volunteer first aid or rescue squad, the commission shall issue to it a registration certificate as proof of such a determination. The certificate shall be sufficient proof to a municipal governing body that the organization holding it is eligible to apply for a license to hold, operate and conduct games of chance in accordance with the provisions of the Bingo Licensing Law or the Raffles Licensing Law, as the case may be. The commission shall have power also to approve any person, persons or corporation, applying to it for approval, to lease, sell or provide any equipment for use in or in connection with the holding, operating or conducting of any game or games of chance authorized to be held, operated or conducted under the Bingo Licensing Law or the Raffles Licensing Law as to such person's or persons' good moral character and freedom from conviction of crime or, if a corporation, as to the good moral character and freedom from conviction of crime of all of its officers and each of its stockholders who hold 10% or more of its stock issued and outstanding, and any such application may be disapproved by the commission after hearing and due notice thereof if it shall find that the applicant is not of good moral character and free from conviction of crime as hereinbefore prescribed. For the purposes of this section, upon the request of the commissioner, each applicant for approval to lease, sell or provide any equipment for use in or in connection with the holding, operating or conducting of any game or games of chance authorized to be held, operated or conducted under the Bingo Licensing Law or the Raffles Licensing Law,

shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commission in the event an applicant or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

5. Section 84 of P.L. 1977, c. 110 (C.5:12-84) is amended to read as follows:

C.5:12-84 Casino license - applicant requirements.

84. Casino License--Applicant Requirements. Any applicant for a casino license must produce information, documentation and assurances concerning the following qualification criteria:

a. Each applicant shall produce such information, documentation and assurances concerning financial background and resources as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

b. Each applicant shall produce such information, documentation and assurances as may be necessary to establish by clear and convincing evidence the integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears any relation to the casino proposal submitted by the applicant or applicants; provided, however, that this section shall not apply to banking or other licensed lending institutions exempted from the qualification requirements of subsections c. and d. of section 85 of P.L. 1977, c. 110 (C.5:12-85) and institutional investors waived from the qualification requirements of those subsections pursuant to the provisions of subsection f. of section 85 of P.L. 1977, c. 110 (C.5:12-85). Any such banking or licensed lending institution or institutional investor shall, however, produce for the commission or the division upon request any document or information which

bears any relation to the casino proposal submitted by the applicant or applicants. The integrity of financial sources shall be judged upon the same standards as the applicant. In addition, the applicant shall produce whatever information, documentation or assurances as may be required to establish by clear and convincing evidence the adequacy of financial resources both as to the completion of the casino proposal and the operation of the casino.

c. Each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, information pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against any such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what the information is. If the applicant has conducted gaming operations in a jurisdiction which permits such activity, the applicant shall produce letters of reference from the gaming or casino enforcement or control agency which shall specify the experiences of such agency with the applicant, his associates, and his gaming operation; provided, however, that if no such letters are received within 60 days of request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

d. Each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish the likelihood of creation and maintenance of a successful, efficient casino operation. The applicant shall produce the names of all proposed casino key employees as they become known and a description of their respective or proposed responsibilities, and a full description of security systems and management controls proposed for the casino and related facilities.

e. Each applicant shall produce such information, documentation and assurances to establish to the satisfaction of the commission the suitability of the casino and related facilities subject to subsection i. of section 83 of P.L.1977, c.110 (C.5:12-83) and its proposed location will not adversely affect

casino operations. Each applicant shall submit an impact statement which shall include, without limitation, architectural and site plans which establish that the proposed facilities comply in all respects with the requirements of this act and the requirements of the master plan and zoning and planning ordinances of Atlantic City, without any use variance from the provisions thereof; a market impact study which analyzes the adequacy of the patron market and the effect of the proposal on such market and on the existing casino facilities licensed under this act; and an analysis of the effect of the proposal on the overall economic and competitive conditions of Atlantic City and the State of New Jersey.

f. For the purposes of this section, each applicant shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commission in the event a current or prospective licensee, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

6. Section 89 of P.L. 1977, c. 110 (C.5:12-89) is amended to read as follows:

C.5:12-89 Licensing of casino key employees.

89. Licensing of Casino Key Employees.

a. No person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the commission.

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

(1) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

(3) (Deleted by amendment, P.L. 1995, c. 18.)

(4) Each applicant shall be a resident of the State of New Jersey prior to the issuance of a casino key employee license; provided, however, that upon petition by the holder of a casino license, the commission may waive this residency requirement for any applicant whose particular position will require him to be employed outside the State.

The commission may also, by regulation, require that all applicants for casino key employee licenses be residents of this State for a period not to exceed six months immediately prior to the issuance of such license, but application may be made prior to the expiration of the required period of residency. The commission shall, by resolution, waive the required residency period for an applicant upon a showing that the residency period would cause undue hardship upon the casino licensee which intends to employ said applicant, or upon a showing of other good cause.

(5) For the purposes of this section, each applicant shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commission in the event a current or prospective licensee, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

c. (Deleted by amendment, P.L.1995, c.18.)

d. The commission shall deny a casino key employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

e. Upon petition by the holder of a casino license, the commission may issue a temporary license to an applicant for a casino key employee license, provided that:

(1) The applicant for the casino key employee license has filed a complete application as required by the commission;

(2) The division either certifies to the commission that the completed casino key employee license application as specified in paragraph (1) of this subsection has been in the possession of the division for at least 15 days or agrees to allow the commission to consider the application in some lesser time;

(3) (Deleted by amendment, P.L.1995, c.18.)

(4) The petition for a temporary casino key employee license certifies, and the commission finds, that an existing casino key employee position of the petitioner is vacant or will become vacant within 60 days of the date of the petition and that the issuance of a temporary key employee license is necessary to fill the said vacancy on an emergency basis to continue the efficient operation of the casino, and that such circumstances are extraordinary and not designed to circumvent the normal licensing procedures of this act;

(5) The division does not object to the issuance of the temporary casino key employee license.

In the event that an applicant for a casino key employee license is the holder of a valid casino employee license issued pursuant to section 90 of this act, and if the provisions of paragraphs (1), (2), and (5) of this subsection are satisfied, the commission may issue a temporary casino key employee license upon petition by the holder of a casino license, if the commission finds the

issuance of a casino key employee license will be delayed by necessary investigations and the said temporary casino key employee license is necessary for the operation of the casino.

Unless otherwise terminated pursuant to this act, any temporary casino key employee license issued pursuant to this subsection shall expire nine months from the date of its issuance.

7. Section 90 of P.L. 1977, c. 110 (C.5:12-90) is amended to read as follows:

C.5:12-90 Licensing of casino employees.

90. Licensing of Casino Employees.

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section.

c. The commission may, by regulation, require that all applicants for casino employee licenses be residents of this State for a period not to exceed six months immediately prior to the issuance of such license, but application may be made prior to the expiration of the required period of residency. The commission shall, by resolution, waive the required residency period for an applicant upon a showing that the residency period would cause undue hardship upon the casino licensee which intends to employ said applicant, or upon a showing of other good cause.

d. (Deleted by amendment, P.L. 1995, c. 18.)

e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

f. For the purposes of this section, casino security employees shall be considered casino employees and must, in addition to any requirements under other laws, be licensed in accordance with the provisions of this act.

g. Upon petition by the holder of a casino license, a temporary license may be issued by the commission to an applicant for a casino employee license provided that:

(1) the applicant for the casino employee license has filed a complete application as required by the commission;

(2) the division either certifies to the commission that the completed casino employee license application as specified in paragraph (1) of this subsection has been in the possession of the division for at least 15 days or agrees to allow the commission to consider the application in some lesser time;

(3) the petition for a temporary casino employee license certifies, and the commission finds, that the issuance of a plenary license will be restricted by necessary investigations, and the temporary licensing of the applicant is necessary for the operation of the casino and is not designed to circumvent the normal licensing procedures of the "Casino Control Act"; and

(4) the division does not object to the issuance of the temporary casino employee license.

Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire six months from the date of its issuance and be renewable, at the discretion of the commission, for one additional six-month period.

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c.110 (C.5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

i. For the purposes of this section, each applicant shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State

Police shall promptly notify the commission in the event a current or prospective licensee, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

8. Section 91 of P.L. 1977, c. 110 (C.5:12-91) is amended to read as follows:

C.5:12-91 Registration of casino service employees.

91. Registration of Casino Service Employees.

a. No person may commence employment as a casino service employee unless the person has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino service employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino service employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C.5:12-86).

c. The commission may, by regulation, require that all applicants for casino service employee registration be residents of this State for a period not to exceed three months immediately prior to such registration, but application may be made prior to the expiration of the required period of residency. The commission shall waive the required residency period for an applicant upon a showing that the residency period would cause undue hardship upon the casino licensee which intends to employ said applicant, or upon a showing of other good cause.

d. Notwithstanding the provisions of subsection b. of this section, no casino service employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C.5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated the registrant's rehabilitation. In determining whether the registrant has affirmatively demonstrated the registrant's rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the registrant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

e. The commission may waive any disqualification criterion for a casino service employee consistent with the public policy of this act and upon a finding that the interests of justice so require.

f. Upon petition by the holder of a casino license, casino service employee registration shall be granted to each applicant for such registration named therein, provided that the petition certifies that each such applicant has filed a completed application for casino service employee registration as required by the commission.

All casino hotel employee registrations shall expire 120 days after the effective date of this amendatory and supplementary act, P.L.2002, c.65. Any holder of a casino hotel employee registration may until that date convert that registration to a casino service employee registration without fee.

g. For the purposes of this section, each applicant shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commission in the event a current or prospective licensee, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

9. Section 1 of P.L.1966, c.79 (C.17:9A-18.1) is amended to read as follows:

C.17:9A-18.1 Persons ineligible to serve as officer, director, employee.

1. Except with the written consent of the commissioner, no person shall serve as an officer, director or employee of a bank, savings bank or bank holding company if (a) that person is convicted of any crime involving dishonesty or breach of trust, or (b) that person is prohibited from serving or continuing to serve in such capacity pursuant to 12 U.S.C. s.1829.

Any person seeking employment as an officer, director, or employee of a bank, savings bank or bank holding company shall submit to the commissioner the person's name, address, fingerprints and written consent for a criminal history record background check to be performed; provided, however, that this requirement may be waived by the commissioner if the person provides satisfactory proof that such a criminal history record background check has been performed by a federal regulator. The commissioner is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

10. Section 7 of P.L.1996, c.157 (C.17:11C-7) is amended to read as follows:

C.17:11C-7 Conditions for issuance of license.

7. The commissioner shall issue a license under this act if the following conditions are met:

a. A written application for a new license or for a renewal of a license shall be submitted to the commissioner on the forms and in the manner, and accompanied by such evidence in support of the application, as required by this act and as may be prescribed by the commissioner, and shall be accompanied by the required fees.

b. An individual applicant for a new license shall qualify by examination, the content and form of which shall be approved by the commissioner. The commissioner may designate an independent testing service to prepare and administer the examinations. In addition, the commissioner by regulation may establish additional requirements for licensure as an individual, including education and experience.

c. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a new license or for a renewal of a license demonstrate that the business will be operated honestly, fairly, and efficiently within the purposes of this act, and if all other licensing requirements of this act and regulations promulgated by the commissioner

are met, the commissioner shall issue the license of the type sought by the applicant.

d. A person holding a license under this act or as a sales finance company pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), who is in full compliance with this act, the "Retail Installment Sales Act of 1960," and the regulations promulgated thereunder, as applicable, may apply to the commissioner for a license to act as a mortgage banker or mortgage broker, a secondary lender, a consumer lender or a sales finance company, or any combination of these capacities for which the person is not already licensed, by filing with the commissioner an abbreviated application containing the information which the commissioner deems necessary when considering whether to license that person for that specific activity, an application fee, and the necessary additional license fee.

e. Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

11. R.S.17:17-10 is amended to read as follows:

Certificates authorizing company to commence business; issuance, surrender; replacement carrier.

17:17-10. a. When satisfied that a company has complied with all the requirements of this subtitle to entitle it to engage in business and that the proposed methods of operation of the company are not such as would render its operation hazardous to the public or its policyholders, the commissioner shall issue to the company a certificate authorizing it to commence business, specifying in the certificate the particular kind or kinds of insurance it is authorized to transact. The commissioner may refuse to issue a certificate of authority if he finds that any of the company's directors or officers has been convicted of a crime involving fraud, dishonesty, or like moral turpitude or

that said persons are not persons of good character and integrity. Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership for licensure shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed. No company shall transact the business for which it is incorporated until it has received the certificate from the commissioner. If any company fails to obtain the certificate of authority within one year from the date of the certificate of the Attorney General to its certificate of incorporation, as provided in R.S.17:17-5, the company shall, ipso facto, be dissolved and its certificate of incorporation be null and void.

b. No company licensed to transact insurance business in this State pursuant to chapter 17 of Title 17 of the Revised Statutes may surrender its certificate of authority or discontinue writing or renewing any kind or kinds of insurance specified in the certificate, except in accordance with an informational filing submitted to the commissioner, which filing shall be subject to the following provisions regarding any withdrawals:

(1) the company shall send a notice to policyholders of the proposed withdrawal no later than thirty days following the submission of the informational filing to the commissioner, which shall state that the insurer intends to withdraw and has filed its intention to withdraw with the commissioner, the terms of the withdrawal, including the date of the proposed commencement of nonrenewal of policies, and the proposed duration of the nonrenewal of the company's book of business;

(2) nonrenewals shall not commence prior to one calendar year and ninety days following the submission of the informational filing;

(3) the company shall send a notice of nonrenewal to every policyholder (a) no later than one calendar year preceding the date of nonrenewal and (b) a subsequent notice of nonrenewal in accordance with any time limit otherwise established by law for that line of insurance;

(4) nonrenewals shall take place in a manner so as to be applicable to all insureds on an equitable basis with respect to risk classification and territorial or other form of rating factor, and shall be effectuated at a uniform rate over a period not exceeding three calendar years, commencing with the date established in paragraph (2) of this subsection; provided, however, that if more than one company files for withdrawal for the same line of business and the companies, in the aggregate, write more than 25% of the market share for that line of business, the commissioner may extend the period of withdrawal provided for herein to five years.

The commissioner's authority with respect to withdrawals as provided for herein shall be limited to enforcing compliance with this subsection and enforcing the terms of the withdrawal plan proposed in the informational filing.

c. Upon receiving the informational filing provided for in subsection b. of this section, the commissioner shall consider, and may require as a condition of approval, whether some or all of the company's other certificates of authority issued pursuant to Title 17 of the Revised Statutes held by the company or other companies within the same holding company system as the company submitting the plan shall be required to be surrendered.

d. Notwithstanding the provisions of subsection b. of this section, if the company finds a replacement carrier for the business that will not be renewed as the result of the withdrawal either prior to or after the date of the informational filing, the insurer may apply to the commissioner for approval to transfer the business to a replacement carrier or carriers. If the commissioner approves the replacement carrier or carriers, notwithstanding the provisions of paragraphs (1), (2), and (3) of subsection b. of this section, the notice of nonrenewal shall be in compliance with the time limits provided by law for that line of insurance, and the company shall offer every insured coverage with the replacement carrier prior to the effective date of the nonrenewal. The commissioner shall not withhold approval of a replacement carrier or carriers if that insurer is authorized to do business in the same line of business in New Jersey and has the financial and business capability to write and service the business being transferred to it by the withdrawing company. The commissioner shall approve or disapprove the replacement carrier or carriers within 60 days of (1) the date of the filing by both the withdrawing insurer requesting approval of a replacement carrier or carrier or (2) the filing by the replacement carrier or carriers requesting to be a replacement carrier, whichever is later.

e. Notwithstanding the provisions of subsection b. of this section, the commissioner may waive the requirements of paragraph (2) of that subsection, and the one-year nonrenewal notice of paragraph (3) of that subsection, as well as the three-year minimum nonrenewal period provided in paragraph (4) of that subsection if the commissioner deems a waiver to be necessary

to protect the solvency of the insurer making the informational filing or if the commissioner deems the withdrawal to have a limited impact on the market.

12. Section 7 of P.L.2001, c.210 (C.17:22A-32) is amended to read as follows:

C.17:22A-32 Application, approval.

7. a. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

- (1) Is at least 18 years of age;
- (2) Has not committed any act that is a ground for denial, suspension or revocation set forth in section 15 of this act;
- (3) Has completed a prelicensing course of study for the lines of authority for which the individual has applied as prescribed by the commissioner by regulation;
- (4) Has paid the fees set forth in section 19 of this act; and
- (5) Has successfully passed the examinations for the lines of authority for which the individual has applied.

b. A business entity acting as an insurance producer shall obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the fees set forth in section 19 of this act; and
- (2) The business entity has designated a licensed insurance producer or producers responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.

c. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

d. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that is approved by the commissioner.

e. Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is hereby

authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

13. Section 2 of P.L.1999, c.211 (C.17B:30A-2) is amended to read as follows:

C.17B:30A-2 Licensing required as viatical settlement provider, representative, broker.

2. a. A person shall not operate as a viatical settlement provider, viatical settlement representative or viatical settlement broker without first having obtained a license from the commissioner.

b. Application for a viatical settlement provider, viatical settlement representative or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee, the amount of which shall be set by the commissioner by regulation.

c. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee in an amount set by the commissioner by regulation. Failure to pay the fee by the renewal date shall result in expiration of the license.

d. The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this act.

e. A license issued to a legal entity authorizes all members, officers and designated employees to act as viatical settlement providers, viatical settlement brokers or viatical settlement representatives, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

f. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

- (1) Has provided a detailed plan of operation;
- (2) Is competent and trustworthy and intends to act in good faith in the capacity of the license applied for;
- (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for; and
- (4) If a legal entity, provides a certificate of good standing from the state of its domicile.

g. The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner, or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

h. A viatical settlement provider, viatical settlement representative or viatical settlement broker transacting business in this State prior to the effective date of this act may continue to do so pending approval or disapproval of the provider, representative or broker's application for a license as long as the application is filed with the commissioner on or before the 180th day after the effective date of this act.

i. Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

14. N.J.S.17B:18-42 is amended to read as follows:

Certificate of authority; when issuable.

17B:18-42. When satisfied that a domestic insurer has complied with all the requirements of this code to entitle it to engage in business and that the proposed methods of operation of the insurer are not such as would render its operation hazardous to the public or its policyholders, the commissioner shall issue to the insurer a certificate authorizing it to commence business, specifying in the certificate the particular kind or kinds of insurance it is authorized to transact. The commissioner may refuse to issue a certificate of authority if he finds that any of the insurer's directors or officers has been convicted of a crime involving fraud, dishonesty, or like moral turpitude or that said persons are not persons of good character and integrity. Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership for licensure shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed. No insurer shall transact the business for which it is incorporated until it has received the certificate from the commissioner. If any insurer fails to obtain the certificate of authority within one year from the date of the certificate of the commissioner to its certificate of incorporation, as provided in section 17B:18-5, and such failure is the result of its lack of due diligence in meeting the requirements therefor, the insurer shall, ipso facto, be dissolved and its certificate of incorporation be null and void.

15. R.S.45:22-3 is amended to read as follows:

Application for license; contents, criminal history record background check.

Application for such license shall be in writing and shall state the full name and place of residence of the applicant, or, if the applicant be a partnership, of each member thereof, or, if the applicant be a corporation or association, of each officer and stockholder thereof, together with the place or places where the business is to be conducted.

Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

16. Section 13 of P.L.1968, c.356 (C.30:11-23) is amended to read as follows:

C.30:11-23 Qualification of applicants, criminal history record background check.

13. Except as to persons who shall qualify for a conditional license pursuant to the provisions of this act, no license shall be issued to a person unless he is a citizen of the United States at the time of the submission of the application, or has declared his intention of becoming a citizen of the United States in the form and manner prescribed by the Commissioner of Health and Senior Services. No license granted to a noncitizen shall be valid or be renewed after six years from the date of his declaration of intention unless he shall furnish evidence of his actually having become a citizen. No license shall be issued to any person under the age of 18 years; to any person who has ever been convicted of a crime involving moral turpitude; or to any person who has been found guilty of violating the provisions of this act by a court of competent jurisdiction or who has admitted such guilt.

For the purposes of this section, each applicant for a license shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check,

including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

17. Section 2 of P.L. 1954, c. 14 (C.32:23-86) is amended to read as follows:

C.32:23-86 Additional powers of the commission.

2. In addition to the powers and duties elsewhere described in this act, the commission shall have the following powers:

(1) To issue temporary permits and permit temporary registrations under such terms and conditions as the commission may prescribe which shall be valid for a period to be fixed by the commission not in excess of six months.

(2) To require any applicant for a license or registration or any prospective licensee to furnish such facts and evidence as the commission may deem appropriate to enable it to ascertain whether the license or registration should be granted.

(3) In any case in which the commission has the power to revoke, cancel or suspend any stevedore license the commission shall also have the power to impose as an alternative to such revocation, cancellation or suspension, a penalty, which the licensee may elect to pay the commission in lieu of the revocation, cancellation or suspension. The maximum penalty shall be \$5,000.00 for each separate offense. The commission may, for good cause shown, abate all or part of such penalty.

(4) To designate any officer, agent or employee of the commission to be an investigator who shall be vested with all the powers of a peace or police officer of the State of New York in that State, and of the State of New Jersey in that State.

(5) To confer immunity, in the following manner: In any investigation, interview or other proceeding conducted under oath by the commission or any duly authorized officer, employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and notwithstanding such refusal, an order is made upon 24 hours' prior written notice to the appropriate Attorney General of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of Article III of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer

given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

"Immunity" as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of Article III of this act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate Attorney General or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him.

(6) To require any applicant or renewal applicant for registration as a longshoreman, any applicant or renewal applicant for registration as a checker or any applicant or renewal applicant for registration as a telecommunications system controller and any person who is sponsored for a license as a pier superintendent or hiring agent, any person who is an individual owner of an applicant or renewal applicant stevedore or any persons who are individual partners of an applicant or renewal applicant stevedore, or any officers, directors or stockholders owning five percent or more of any of the stock of an applicant or renewal applicant corporate stevedore or any applicant or renewal applicant for a license as a port watchman or any other category of applicant or renewal applicant for registration or licensing within the commission's jurisdiction to be fingerprinted by the commission at the cost and expense of the applicant or renewal applicant.

(7) To exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the State Bureau of Identification for use in making the determinations required by this section.

(8) Notwithstanding any other provision of law to the contrary, to require any applicant for employment or employee of the commission to be fingerprinted at the cost and expense of the applicant or employee and to exchange fingerprint data with and receive criminal history record information

from the Federal Bureau of Investigation and the State Bureau of Identification for use in the hiring or retention of such person.

18. R.S.33:1-25 is amended to read as follows:

Issuance of license, application, qualifications; criminal record background check, fee.

33:1-25. No license of any class shall be issued to any person under the age of 21 years or to any person who has been convicted of a crime involving moral turpitude. Each applicant shall submit to the director the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The director is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the director in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

In applications by corporations, except for club licenses, the names and addresses of, and the amount of stock held by, all stockholders holding 1% or more of any of the stock thereof, and the names and addresses of all officers and of all members of the board of directors must be stated in the application, and if one or more of the officers or members of the board of directors or one or more of the owners, directly or indirectly, of more than 10% of the stock would fail to qualify as an individual applicant in all respects, no license of any class shall be granted.

In applications for club licenses, the names and addresses of all officers, trustees, directors, or other governing official, together with the names and addresses of all members of the corporation, association or organization, must be stated in the application.

In applications by partnerships, the application shall contain the names and addresses of all of the partners. No license shall be issued unless all of the partners would qualify as individual applicants.

A photostatic copy of all federal permits necessary to the lawful conduct of the business for which a State license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the director, must accompany the license application, together with a deposit of the full amount of the required license fee, which deposit to the extent of 90% thereof shall be returned to the applicant by the director or other issuing authority if the

application is denied, and the remaining 10% shall constitute an investigation fee and be accounted for as other license fees.

Every applicant for a license that is not a renewal of an annual license shall cause a notice of the making of the application to be published in a form prescribed by rules and regulations, once per week for two weeks successively in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premises are located; but if there shall be no such newspaper, then the notice shall be published in a newspaper, printed in the English language, published and circulated in the county in which the licensed premises are located. No publication shall be required with respect to applications for transportation or public warehouse licenses or with respect to applications for renewal of licenses.

The Division of Alcoholic Beverage Control shall cause a general notice of the making of annual renewal applications and the manner in which members of the public may object to the approving of the applications to be published in a form prescribed by rules and regulations, once per week from the week of April 1 through the week of June 1 in a newspaper printed in the English language published and circulated in the counties in which the premises of applicants for renewals of annual licenses are located. Any application for the renewal of an annual license shall be made by May 1, and none shall be approved before May 1.

Every person filing an application for license, renewal of license or transfer of license with a municipal issuing authority shall, within 10 days of such filing, file with the director a copy of the application together with a nonreturnable filing fee of \$200.

Applicants for licenses shall answer questions as may be asked and make declarations as shall be required by the form of application for license as may be promulgated by the director from time to time. All applications shall be duly sworn to by each of the applicants, except in the case of applicants in the military service of the United States whose applications may be signed in their behalf by an attorney-in-fact holding a power of attorney in form approved by the director, and except in cases of applications by corporations which shall be duly sworn to by the president or vice-president. All statements in the applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in the application shall be guilty of a misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for suspension or revocation of the license.

The provisions of section 26 of P.L.2003, c.117 amendatory of this section shall apply to licenses issued or transferred on or after July 1, 2003, and to license renewals commencing on or after July 1, 2003.

19. R.S.33:1-26 is amended to read as follows:

License, term, transfer; fee.

33:1-26. All licenses shall be for a term of one year from July 1 in each year. The respective fees for any such license shall be prorated according to the effective date of the license and based on the respective annual fee as in this chapter provided. Where the license fee deposited with the application exceeds the prorated fee, a refund of the excess shall be made to the licensee. Licenses are not transferable except as hereinafter provided. A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises. No retail license of any class shall be issued to any holder of a manufacturer's or wholesaler's license, and no manufacturer's or wholesaler's license shall be issued to the holder of a retail license of any class. Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a licensee except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor.

In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the director or the issuing authority may, in his or its discretion, extend the license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid. Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except for payment of taxes, fees, interest and penalties imposed by any State tax law for which a lien may attach pursuant to R.S.54:49-1 or pursuant to the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., or any similar State lien of tax, except to the extent expressly provided by this chapter.

On application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to the premises, and after publication of notice of intention to apply for transfer, in the same manner as is required in case of an application for license as to the premises, the director or other issuing authority may transfer, upon payment of a fee of 10% of the annual license fee for the license sought to be transferred, any license issued by him or it respectively to a different place of business than that specified therein, by endorsing permission upon the license.

On application made therefor setting forth the same matters and things with reference to the person to whom a transfer of license is sought as are

required to be set forth in connection with an original application for license, which application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to the transfer, and after publication of notice of intention by the person to whom the transfer of license is sought, to apply for transfer in the same manner as is required in the case of an original application for license, the director or other issuing authority, as the case may be, may transfer any license issued by him or it respectively to the applicant for transfer by endorsing the license. The application and the applicant shall comply with all requirements of this chapter pertaining to an original application for license and shall be accompanied, in lieu of the license fee required on the original application, by a fee of 10% of the annual license fee for the license sought to be transferred, which 10% shall be retained by the director or other issuing authority, as the case may be, whether the transfer be granted or not, and accounted for as other license fees.

If the other issuing authority shall refuse to grant a transfer the applicant shall be notified forthwith of the refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application, and the applicant may, within 30 days after the date of service or mailing of the notice, appeal to the director from the action of the issuing authority. If the other issuing authority shall grant a transfer, any taxpayer or other aggrieved person opposing the grant of the transfer may, within 30 days after the grant of the transfer, appeal to the director from the action of the issuing authority.

No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee. A person failing to qualify as to age or by reason of conviction of a crime involving moral turpitude may, with the approval of the director, and subject to rules and regulations, be employed by any licensee, but the employee if disqualified by age shall not, in any manner whatsoever serve, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage; and further provided, that no permit shall be necessary for the employment in a bona fide hotel or restaurant of any person failing to qualify as to age so long as the person shall not in any manner whatsoever serve, sell or solicit the sale of any alcoholic beverage, or participate in the mixing, processing or preparation thereof. Each person seeking to be employed or connected in any business capacity whatsoever with a licensee shall submit to the director the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The director is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of

Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the director in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

Any request for relief under this section shall be accompanied by a nonreturnable filing fee of \$100.00 payable to the director.

20. R.S.33:1-31.2 is amended to read as follows:

Application for removal of statutory disqualification; fee.

33:1-31.2. Any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of conviction, apply to the commissioner for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under this chapter. Whenever any such application is made and it appears to the satisfaction of the commissioner that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest, the commissioner may, in his discretion and subject to rules and regulations, enter an order removing the applicant's disqualification from obtaining or holding a license or permit because of the conviction.

On and after the date of the entry of the order, the person therein named shall be qualified to obtain and hold a license or permit under this chapter, notwithstanding the conviction therein referred to, provided he is, in all other respects, qualified under this chapter.

Any request for relief under this section shall be accompanied by a nonreturnable filing fee of \$100.00 payable to the director. Each applicant shall submit to the director the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The director is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the director in the event a current holder of a license or employee or prospective applicant, who was the subject of a criminal history record background check pursuant

to this section, is arrested for a crime or offense in this State after the date the background check was performed.

21. Section 5 of P.L. 1995, c. 112 (C.39:8-45) is amended to read as follows:

C.39:8-45 Licensing of private inspection facility, requirements, application fee.

5. a. (1) The chief administrator, after appropriate inquiry and investigation, may license persons to operate private inspection facilities to inspect initially, reinspect and certify all motor vehicles that are subject to inspection pursuant to R.S.39:8-1. A person shall not be licensed unless qualified to conduct the inspections and reinspections, and in possession of the necessary equipment.

(2) The chief administrator, by regulation with the concurrence of the Department of Environmental Protection, may establish a limited number of distinct classes of licenses, may restrict the activities authorized by each distinct class of license, including restrictions as to the vehicles that may be inspected or reinspected, and may restrict the services that holders of each class may perform in addition to the activities authorized by the license. These regulations shall permit private inspection facilities to perform initial inspections on motor vehicles four years old or newer and, to the maximum extent feasible, permit private inspection facilities to perform initial inspections on motor vehicles that are more than four years old and to repair and reinspect all motor vehicles.

b. (1) The chief administrator may license as a private inspection facility any person that is the owner or lessee of 10 or more motor vehicles to initially inspect, reinspect and certify vehicles that the person owns or leases.

(2) The chief administrator, by regulation with the concurrence of the Department of Environmental Protection, may restrict the activities authorized by a license issued pursuant to this subsection, including restrictions as to the vehicles that may be inspected or reinspected, and may restrict the services that holders of this license may perform in addition to the activities authorized by the license.

c. The chief administrator shall require a private inspection facility licensee to have in effect at all times liability insurance or such other proof of financial responsibility as the chief administrator may prescribe; and may require a performance bond.

d. The chief administrator shall prescribe the form and content of the application for a private inspection facility license, and may charge a nonrefundable application fee not to exceed \$20. The chief administrator may charge a license fee, not to exceed \$250, to be paid by a person for each year or part of a year in which that person holds a private inspection facility license. All fees collected pursuant to this subsection shall be paid to the State

Treasurer and deposited in the "Motor Vehicle Inspection Fund" established pursuant to subsection j. of R.S.39:8-2.

e. For the purposes of this section, each applicant for a license shall submit to the chief administrator the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The chief administrator is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the chief administrator in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

22. R.S.39:10-19 is amended to read as follows:

Dealer's license; eligibility, term, fee.

39:10-19. No person shall engage in the business of buying, selling or dealing in motor vehicles in this State, nor shall a person engage in activity that would qualify the person as a leasing dealer, as defined in section 2 of P.L.1994, c.190 (C.56:12-61), unless: a. he is a licensed real estate broker acting as an agent or broker in the sale of mobile homes without their own motor power other than recreation vehicles as defined in section 3 of P.L.1990, c.103 (C.39:3-10.11), or manufactured homes as defined in section 3 of P.L.1983, c.400 (C.54:4-1.4); or b. he is authorized to do so under the provisions of this chapter. The director may, upon application in such form as he prescribes, license any proper person as such dealer or leasing dealer. A licensed real estate broker shall be entitled to act as an agent or broker in the sale of a mobile or manufactured home as defined in subsection a. of this section without obtaining a license from the director. For the purposes of this chapter, a "licensed real estate broker" means a real estate broker licensed by the New Jersey Real Estate Commission pursuant to the provisions of chapter 15 of Title 45 of the Revised Statutes. Any sale or transfer of a mobile or manufactured home, in which a licensed real estate broker acts as a broker or agent pursuant to this section, which sale or transfer is subject to any other requirements of R.S.39:10-1 et seq., shall comply with all of those requirements. No person who has been convicted of a crime, arising out of fraud or misrepresentation in the sale, leasing or financing of a motor vehicle, shall

be eligible to receive a license. For the purposes of this section, each applicant for a license shall submit to the director the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The director is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the director in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed. Each applicant for a license shall at the time such license is issued have established and maintained, or by said application shall agree to establish and maintain, within 90 days after the issuance thereof, a place of business consisting of a permanent building not less than 1,000 square feet in floor space located in the State of New Jersey to be used principally for the servicing and display of motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the laws of this State and with any rules and regulations made by the director of motor vehicles governing the equipment, use and operation of motor vehicles within the State. However, a leasing dealer, who is not engaged in the business of buying, selling or dealing in motor vehicles in the State, shall not be required to maintain a place of business with floor space available for the servicing or display of motor vehicles or to have an exterior sign at the lessor's place of business. A license fee of \$100 shall be paid by an applicant upon his initial application for a license. The director may renew an applicant's license from year to year, upon application for renewal on a form prescribed by the director and accompanied each year by a renewal fee of \$100. Every license shall expire on March 31 of each year terminating the period for which it is issued. On and after February 1 of each year the director shall issue licenses for the following yearly period to expire on March 31 of the following year.

For the purposes of this section, a leasing dealer or an assignee of a leasing dealer whose leasing activities are limited to buying motor vehicles for the purpose of leasing them and selling motor vehicles at the termination of a lease shall not be deemed to be engaged in the business of buying, selling or dealing in motor vehicles in this State.

23. Section 2 of P.L.1951, c.216 (C.39:12-2) is amended to read as follows:

C.39:12-2 License required to conduct drivers' school; application; fees.

2. No person shall engage in the business of conducting a drivers' school without being licensed therefor by the Chief Administrator of the New Jersey Motor Vehicle Commission. Application therefor shall be in writing and contain such information therein as he shall require on initial and renewal applications, including the applicant's Federal Tax Identification number, State tax identification number and proof of workers' compensation insurance coverage by a mutual association or stock company authorized to write coverage on such risks in this State or written authorization by the Commissioner of Banking and Insurance to self-insure for workers' compensation pursuant to R.S.34:15-77. The applicant shall file a surety bond in the amount of \$10,000 issued by a company authorized to transact surety business in this State and payable to the division. A license shall not be issued or renewed unless the applicant or an employee is a qualified supervising instructor. For purposes of this section, a "qualified supervising instructor" shall mean a drivers' school instructor who a. is currently licensed and has been licensed by the division for at least two years prior to submission of the initial or renewal application, b. has successfully provided a minimum of 500 hours of behind-the-wheel instruction, and c. has successfully completed a three credit New Jersey driver education college course offered by a college or university licensed by the New Jersey Commission on Higher Education. The applicant shall furnish, together with the application, satisfactory evidence that the applicant or an employee is a qualified supervising instructor as set forth herein, except that an applicant for license renewal shall have one year after the date this act becomes effective to furnish evidence of completion of a three credit New Jersey driver education college course to the division. If the application is approved, the applicant shall be granted a license to teach approved courses in classroom and behind-the-wheel driver education upon the payment of a fee of \$250.00; provided, however, no license fee shall be charged for the issuance of a license to any board of education, school board, public, private or parochial school, which conducts a course in driver education, approved by the State Department of Education. A license so issued shall be valid during the calendar year. The annual fee for renewal shall be \$200. The chief administrator shall issue a license certificate or license certificates to each licensee, one of which shall be displayed in each place of business of the licensee.

For the purposes of this section, each applicant for a license shall submit to the chief administrator the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The chief administrator is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of

Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the chief administrator in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

24. Section 5 of P.L. 1951, c.216 (C.39:12-5) is amended to read as follows:

C.39:12-5 Instructor's license; motorcycle endorsement; fees.

5. No person shall be employed by any such licensee to give instruction in driving a motor vehicle unless he shall be licensed to act as such instructor by the chief administrator. No person shall be employed by such licensee to instruct a motorcycle safety education course as established pursuant to section 1 of P.L. 1991, c.452 (C.27:5F-36) unless he has received from the chief administrator a motorcycle safety education instructor endorsement to his instructor's license. The chief administrator shall issue a motorcycle safety education instructor endorsement to an instructor's license if the person meets the requirements set forth in section 2 of P.L. 1991, c.452 (C.27:5F-37).

Application for an instructor's license or for a motorcycle safety education instructor endorsement to an instructor's license shall be in writing and shall contain such information as the chief administrator shall require.

The initial fee for an instructor's license shall be \$75.00 and a fee for an annual renewal thereof shall be \$50. No additional fee shall be charged by the chief administrator for a motorcycle safety education instructor endorsement. The license so issued shall be valid for the calendar year within which it is issued, and renewals shall be for succeeding calendar years.

For the purposes of this section, each applicant for a license shall submit to the chief administrator the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The chief administrator is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the chief administrator

in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

25. N.J.S.40A:14-9 is amended to read as follows:

General qualifications of members; temporary appointments; absences from duty.

40A:14-9. Except as otherwise provided by law, no person shall be appointed as a member of the paid or as a paid member of a part-paid fire department and force, unless he:

- (1) is a citizen of the United States;
- (2) is sound in body and of good health sufficient to satisfy the board of trustees of the police and firemen's retirement system of New Jersey as to his eligibility for membership in the retirement system;
- (3) has a high school diploma or an equivalency certificate and is able to read, write and speak the English language well and intelligently;
- (4) is of good moral character; and
- (5) has not been convicted of any criminal offense involving moral turpitude.

For the purposes of this section, each applicant shall submit to the appointing body of the municipality, the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The appointing body of the municipality is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the appointing body of the municipality in the event a current employee or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed. The appointing body, officer or officers of the municipality when authorized so to do, may employ such officers and other personnel for said paid or part-paid fire department and force as temporary employees in emergencies, or for certain specified parts of the year, as needed.

Except as otherwise provided by law, any permanent paid member or officer of such paid or part-paid fire department and force, who is absent from duty without just cause or leave of absence, for a continuous period of 5 days, shall cease to be a member of such paid or part-paid fire department.

26. R.S.45:15-9 is amended to read as follows:

Real estate licenses.

45:15-9. All persons desiring to become real estate brokers, broker-salespersons or salespersons shall apply to the commission for a license under the provisions of this article. Every applicant for a license as a broker, broker-salesperson or salesperson shall be of the age of 18 years or over, and in the case of an association or a corporation the directors thereof shall be of the age of 18 years or over. Application for a license, whether as a real estate broker, broker-salesperson or a salesperson, shall be made to the commission upon forms prescribed by it and shall be accompanied by an application fee of \$50 which fee shall not be refundable. Every applicant for a license whether as a real estate broker, broker-salesperson or salesperson shall have the equivalent of a high school education. The issuance of a license to an applicant who is a nonresident of this State shall be deemed to be his irrevocable consent that service of process upon him as a licensee in any action or proceeding may be made upon him by service upon the secretary of the commission or the person in charge of the office of the commission. The applicant shall furnish evidence of good moral character, and in the case of an association, partnership or corporation, the members, officers or directors thereof shall furnish evidence of good moral character. The commission may make such investigation and require such proof as it deems proper and in the public interest as to the honesty, trustworthiness, character and integrity of an applicant. Any applicant for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background was performed. Every applicant for a license as a broker or broker-salesperson shall have first been the holder of a New Jersey real estate salesperson's license and have been actively engaged on a full-time basis in the real estate brokerage business in

this State for three years immediately preceding the date of application, which requirement may be waived by the commission where the applicant has been the holder of a broker's license in another state and actively engaged in the real estate brokerage business for at least three years immediately preceding the date of his application, meets the educational requirements and qualifies by examination. No license as a broker shall be granted to a general partnership or corporation unless at least one of the partners or officers of said general partnership or corporation qualifies as and holds a license as a broker to transact business in the name and on behalf of said general partnership or corporation as its authorized broker and no such authorized broker shall act as a broker on his own individual account unless he is also licensed as a broker in his individual name; the license of said general partnership or corporation shall cease if at least one partner or officer does not hold a license as its authorized broker at all times. A change in the status of the license of an authorized broker to an individual capacity or vice versa shall be effected by application to the commission accompanied by a fee of \$50. No license as a broker shall be granted to a limited partnership unless its general partner qualifies as and holds a license as a broker to transact business in the name of and on behalf of the limited partnership. In the event that a corporation is a general partner of a limited partnership, no license as a broker shall be granted to the limited partnership unless the corporation is licensed as a broker and one of the officers of the corporation qualifies as and holds a license as the corporation's authorized broker.

In the event that any person to whom a broker's or broker-salesperson's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of more than two but less than five consecutive years after the expiration of the last license held, prior to issuing another broker or broker-salesperson license to the person, the commission shall require such person to work as a licensed salesperson on a full-time basis for one full year, to pass an examination, and to successfully complete a 90-hour general broker's pre-licensure course at a licensed real estate school, as the commission shall prescribe by regulation. In the event that any person to whom a broker's or broker-salesperson's license has been or shall have been issued fails to maintain or renew the license or obtain a new license for a period of more than five consecutive years after the expiration of the last license held, prior to issuing another broker or broker-salesperson license to the person the commission shall require the person to pass the salesperson's license examination and then to work as a licensed salesperson on a full-time basis for three years, to fulfill all of the educational requirements applicable to first time applicants for a broker or broker-salesperson license and to pass the broker's license examination. The commission may, in its discretion, approve for relicensure the former holder of a broker or broker-salesperson license who has not renewed

the license or obtained a new license for two or more consecutive years upon a sufficient showing that the applicant was medically unable to do so. All applicants so approved shall pass the broker's license examination prior to being relicensed. This paragraph shall not apply to a person reapplying for a broker's or broker-salesperson's license who was licensed as a broker or broker-salesperson and who allowed his license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

In the event that any person to whom a salesperson's license has been or shall have been issued shall fail to maintain or renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the commission shall require such person to attend a licensed school and pass the State examination prior to issuance of a further license. The commission may, in its discretion, approve for relicensure a salesperson applicant who has not renewed his license or obtained a new license for two or more consecutive years upon a sufficient showing that the applicant was medically unable to do so. All salesperson applicants so approved shall pass the salesperson's license examination prior to being relicensed. This paragraph shall not apply to a person reapplying for a salesperson's license who was a licensed salesperson and who allowed his license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

27. Section 49 of P.L.1993, c.51 (C.45:15-10.6) is amended to read as follows:

C.45:15-10.6 Application for, issuance of license as real estate school, fees.

49. a. Every application for licensure as a real estate school shall be accompanied by an application fee of \$100 and a criminal history record check fee for all individual owners, members of a partnership, or officers, directors and owners of a controlling interest in a corporation, which fees shall be non-refundable. Any applicant filing for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission, the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and

regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background was performed.

b. All licenses issued to real estate schools shall expire on a date fixed by the commission which date shall not be more than two years from the date of issuance of the license. The license fee for each real estate school license issued in the first 12 months of any two-year real estate school license term established by the commission shall be \$400 for the first location and \$200 for each additional location licensed. The license fee for each real estate school license issued in the second 12 months of any two-year real estate school license term established by the commission shall be \$200 for the first location and \$100 for each additional location licensed. The fee for the renewal of each real estate school license for an additional two-year license term shall be \$400 for the first location and \$200 for each additional location.

c. Any accredited college or university located in this State or any public adult education program conducted by a board of education in this State which otherwise qualifies for licensure as a real estate school shall be issued a license without the payment of any license or license renewal fee.

28. Section 50 of P.L.1993, c.51 (C.45:15-10.7) is amended to read as follows:

C.45:15-10.7 Application for, issuance of license as real estate instructor; fees.

50. Every application for licensure as a real estate instructor shall be accompanied by an application fee of \$50 and a criminal history record check fee, which fees shall be non-refundable. Any applicant filing for licensure pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure pursuant to this section shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the

check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background was performed. All licenses issued to real estate instructors shall expire on a date fixed by the commission which shall be no more than two years from the date of issuance of the license. The license fee for each real estate instructor license issued in the first 12 months of any two-year real estate instructor license term established by the commission shall be \$200 and the fee for an instructor license issued in the second 12 months of the cycle shall be \$100. The fee for the renewal of each real estate instructor license for an additional two-year license term shall be \$100. Upon payment of the renewal fee and the submission of evidence of satisfactory completion of any continuing education requirements which the commission may by regulation prescribe, the commission shall renew the license of a real estate instructor for a two-year period.

29. Section 4 of P.L.1939, c.369 (C.45:19-11) is amended to read as follows:

C.45:19-11 Application for license.

4. Any person, firm, association or corporation desiring to conduct a private detective business or the business of a private detective or investigator shall, for each bureau or agency, subagency, office and branch office to be owned, conducted, managed or maintained by such person, firm, association or corporation for the conduct of such business, submit to the Superintendent of State Police the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The superintendent shall cause such fingerprints to be compared to fingerprints filed with the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. These fingerprints will be provided in addition to a written application duly signed and verified, accompanied, in the case of an application by a person, with the written approval of not less than five reputable citizens who shall be freeholders of the county where such applicant resides or in the county in which it is proposed to conduct such business, and in the case of a firm, the written approval of five reputable citizens for each of the members of the firm who shall be freeholders of the county where each member of the firm resides or the county in which it is proposed to conduct such business, or in the case of an association or corporation, the written approval by five reputable citizens for each officer and director of the

corporation who shall be freeholders of the county where such officers and directors reside, or of the county in which it is proposed to conduct such business. Such approvals shall be signed and acknowledged by the respective citizens before an officer authorized to take acknowledgments of conveyances of real property. The application shall state the following: Name, age, residence, present and previous occupations of the applicant, or in case of a firm, of each member of the firm, or in the case of an association or corporation, of each officer and director thereof; that each of the foregoing persons are citizens of the United States; the name of the municipality and the location therein by street number or other apt description where is to be located the principal place of business and the location of each bureau, agency, subagency, office or branch office for which a license is desired, and such other facts as may be required by the superintendent as will tend to show the character, competency and integrity of each person or individual signing such application. Any person who shall knowingly state any fact falsely shall be guilty of a misdemeanor.

30. Section 9 of P.L.1939, c.369 (C.45:19-16) is amended to read as follows:

C.45:19-16 Employees of licensees; fingerprints, criminal record background checks.

9. No holder of any unexpired license issued pursuant to this act shall knowingly employ in connection with his or its business in any capacity whatsoever, any person who has been convicted of a high misdemeanor or any of the following misdemeanors, or offenses, and who has not subsequent to such conviction received executive pardon therefor removing any civil disabilities incurred thereby, to wit:

(a) illegally using, carrying or possessing a pistol or other dangerous weapon;

(b) making or possessing burglar's instruments;

(c) buying or receiving stolen property;

(d) unlawful entry of a building;

(e) aiding escape from prison;

(f) unlawfully possessing or distributing habit-forming narcotic drugs;

(g) any person whose private detective or investigator's license was revoked or application for such license was denied by the superintendent or by the authorities of any other State or territory because of conviction of any of the crimes or offenses specified in this section. Should the holder of an unexpired license falsely state or represent that a person is or has been in his employ, such false statement or misrepresentation shall be sufficient cause for the revocation of such license.

No person shall be employed by any holder of a license until he shall have executed and furnished to such license holder a verified statement, to be known as "employee's statement," setting forth:

- (a) His full name, age, residence address, and place of and date of birth.
- (b) The country of which he is a citizen.
- (c) The business or occupation engaged in for the five years immediately preceding the date of the filing of the statement, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers, if any.
- (d) That he has not been convicted of a high misdemeanor or of any offense involving moral turpitude or of any of the misdemeanors or offenses described in this section.
- (e) Such further information as the superintendent may by rule require to show the good character, competency, and integrity of the person executing the statement.

The employee shall submit to the Superintendent of State Police the employee's name, address, fingerprints and written consent for a criminal history background check to be performed. The superintendent is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history background check, including all costs of administering and processing the check. If the superintendent finds that such person has been convicted of a first, second or third degree crime, or any other offense specified in this section, he shall immediately notify the holder of such license and shall also refer the matter to the prosecutor of the pleas of the county in which the employee resides. The superintendent may also from time to time cause such fingerprints to be checked against the fingerprints filed with the State bureau of identification or of other official fingerprint files within or without this State, and if he finds that such person has been convicted of a high misdemeanor or any other offense specified in this section he shall immediately notify the holder of such license and shall also refer the matter to the prosecutor of the pleas of the county in which the employee resides. The superintendent shall at all times be given access to and may from time to time examine the fingerprints retained by the holder of a license as provided in this section.

If any holder of a license shall file with the superintendent the fingerprints of a person other than the person so employed, he shall be guilty of a misdemeanor.

31. Section 8 of P.L.1978, c.73 (C.45:1-21) is amended to read as follows:

C.45:1-21 Refusal to license or renew, grounds.

8. A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued

by the board upon proof that the applicant or holder of such certificate, registration or license:

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
- g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;
- i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;
- j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;
- k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;
- l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;
- m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew

or should have known that the substances were to be used for unauthorized consumption or distribution;

n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;

o. Advertised fraudulently in any manner.

The division is authorized, for purposes of facilitating determinations concerning licensure eligibility, to require the fingerprinting of each applicant in accordance with applicable State and federal laws, rules and regulations. Each applicant shall submit the applicant's name, address, and written consent to the director for a criminal history record background check to be performed. The division is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation. Upon receipt of such notification, the division shall forward the information to the appropriate board which shall make a determination regarding the issuance of licensure. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check, unless otherwise provided for by an individual enabling act. The Division of State Police shall promptly notify the division in the event an applicant or licensee, who was the subject of a criminal history record background check pursuant to this section, is convicted of a crime or offense in this State after the date the background check was performed.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L. 1991, c.421 (C.13:1D-101), for the class or category of permit for which application is made.

"Permit" has the same meaning as defined in section 1 of P.L. 1991, c.421 (C.13:1D-101).

32. Section 9 of P.L. 1967, c.93 (C.49:3-56) is amended to read as follows:

C.49:3-56 Registration required.

9. (a) It shall be unlawful for any person to act as a broker-dealer, agent, investment adviser or investment adviser representative in this State unless that person is registered or exempt from registration under this act;

(b) A person shall be exempt from registration as a broker-dealer if, during any period of 12 consecutive months, that person (1) does not effect more than 15 transactions with persons other than those specified in paragraph (5) of subsection (c) of section 2 of P.L. 1967, c.93 (C.49:3-49) located within

New Jersey; (2) does not effect transactions in more than five customer accounts of New Jersey residents; or (3) effects transactions with persons who have no place of residence in New Jersey and who are temporarily located in the State; if at the time of the transactions described in paragraph (1), (2) or (3) of this subsection (b), the broker-dealer has no place of business in this State and is a member in good standing of a recognized self-regulatory organization and is registered in the state in which the broker-dealer is located;

(c) Agents who represent broker-dealers in transactions exempt pursuant to paragraph (1), (2) or (3) of subsection (b) of this section shall be exempt from registration for those transactions if they are members of a recognized self-regulatory organization and registered in the state in which they are located at the time of the transaction;

(d) The burden of proving an exemption from registration under this section shall be on the person claiming the exemption. A person claiming an exemption from registration under this section shall keep his books and records open to inspection by the bureau. If the bureau chief finds it is in the public interest and necessary for the protection of investors, the bureau chief may deny any exemption specified in paragraph (1), (2) or (3) of subsection (b) or in subsection (c) of this section as to any broker-dealer or agent. The bureau chief may proceed in summary fashion or otherwise;

(e) The bureau chief may identify classes of customers, securities, transactions and broker-dealers for the purpose of increasing the number of transactions or accounts available under the exemptions specified in paragraph (1), (2) or (3) of subsection (b) or subsection (c) of this section;

(f) The bureau chief may by order identify the self-regulatory organizations recognized under subsections (b) and (c) of this section and may by rule or order define the conditions under which non-resident persons are temporarily in New Jersey under paragraph (3) of subsection (b) of this section;

(g) A person shall be exempt from registration as an investment adviser or from making a notice filing required by section 10 of P.L.1967, c.93 (C.49:3-57), if:

(1) The person has a place of business in this State and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49); or

(2) The person has no place of business in this State, and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49).

The bureau chief may by rule or order determine the availability of the exemptions provided by this subsection (g), including the waiver of the conditions in paragraphs (1) and (2) of this subsection;

(h) It shall be unlawful for any broker-dealer or issuer to employ an agent in this State unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the bureau. When an agent terminates his connection with a particular broker-dealer or issuer, his authorization to engage in those activities which make him an agent is terminated;

(i) It shall be unlawful for any person to transact business in this State as an investment adviser unless (1) he is so registered under this act, is exempt from registration under this act, or is excluded from the definition of investment adviser under this act, or (2) he is registered as a broker-dealer without the imposition of a condition under paragraph (5) of subsection (b) of section 11 of P.L. 1967, c. 93 (C.49:3-58);

(j) It shall be unlawful for any investment adviser required to be registered pursuant to this section to employ an investment adviser representative, unless the investment adviser representative is also registered pursuant to this section. It is unlawful for any person registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless that investment adviser representative is registered under this act, or is exempt from registration. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered pursuant to this section or registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3. When an investment adviser representative described in this subsection begins or terminates employment with an investment adviser, the investment adviser and the investment adviser representative shall promptly notify the bureau chief. When an investment adviser representative terminates his connection with a particular investment adviser, his authorization to engage in those activities which make him an investment adviser representative is terminated;

(k) The bureau chief may summarily bar, pending final determination of any proceeding under this subsection, any person, who has been convicted of any crime of embezzlement under state, federal or foreign law or any crime involving any theft, forgery or fraudulent practices in regard to any state, federal

or foreign securities, banking, insurance, or commodities trading laws or anti-fraud laws, from being a partner, officer or director of an issuer, broker-dealer or investment adviser, or from occupying a similar status or performing a similar function or from directly or indirectly controlling or being under common control or being controlled by an issuer, broker-dealer or investment adviser, or from acting as a broker-dealer, agent or investment adviser in this State. Any person barred by this subsection shall be entitled to request a hearing by the same procedures as set forth in subsection (c) of section 3 of P.L.1967, c.93 (C.49:3-50);

(l) Notwithstanding any other provision of this act, the bureau chief may bring an administrative or court action pursuant to section 29 of this act (C.49:3-70.1), to seek and obtain civil penalties for violations of this section;

(m) Every registration shall expire one year from its effective date unless renewed, except that the bureau chief may by rule provide that registrations shall all expire on the same date;

(n) Except with respect to advisers whose only clients are those described in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49), it is unlawful for any person who is registered or required to be registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, as an investment adviser to conduct advisory business in this State, unless that person files those documents filed with the Securities and Exchange Commission with the bureau chief, as the bureau chief may by rule or otherwise require, and a fee and consent to service of process, as the bureau chief, by rule or otherwise, may require;

(o) Notwithstanding anything to the contrary in this act, until October 11, 1999, the bureau chief may require the registration of any person who is registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, and who has failed to promptly pay the fees required by subsection (n) of this section after being notified in writing by the bureau chief of the non-payment or underpayment of those fees. A person shall be considered to have promptly paid those fees if they are remitted to the bureau chief within 15 days following that person's receipt of the written notification from the bureau chief;

(p) For the purposes of this section, each applicant for registration shall submit to the bureau chief, the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The bureau chief is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the

check. The Division of State Police shall promptly notify the bureau chief in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

C.40:23-54 Criminal history record check requested by county, authority for.

33. a. A county may enact an ordinance or resolution, as appropriate, providing that an authorized county official or officer may request a criminal history record background check of any person for an official governmental purpose, including, but not limited to, employment, licensing and the procurement of services. The ordinance or resolution shall provide that the person shall submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations. The ordinance or resolution shall further provide that the official or officer is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation.

b. In order to obtain criminal history record information pursuant to the provisions of an ordinance or resolution, the official or officer shall submit fingerprint data to the State Bureau of Identification. The bureau shall receive all criminal history record information from the Federal Bureau of Investigation and shall disseminate that information to the officer or official.

c. The county shall transmit the fees for the criminal history record background check to the State Bureau of Identification.

d. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Attorney General may promulgate regulations to effectuate the provisions of this section.

C.40:48-1.4 Criminal history record check requested by municipality, authority for.

34. a. A municipality may enact an ordinance providing that an authorized municipal official or officer may request a criminal history record background check of any person for an official governmental purpose, including, but not limited to, employment, licensing and the procurement of services. The ordinance shall provide that the person shall submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations. The ordinance shall further provide that the official or officer is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation.

b. In order to obtain criminal history record information pursuant to the provisions of an ordinance, the official or officer shall submit fingerprint data to the State Bureau of Identification. The bureau shall receive all criminal

history record information from the Federal Bureau of Investigation and shall disseminate that information to the officer or official.

c. The municipality shall transmit the fees for the criminal history record background check to the State Bureau of Identification.

d. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Attorney General may promulgate regulations to effectuate the provisions of this section.

35. This act shall take effect immediately.

Approved December 24, 2003.

CHAPTER 200

AN ACT establishing a New Jersey Commission on Brain Injury Research, supplementing Title 52 of the Revised Statutes and amending R.S.39:5-41.

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

C.52:9EE-1 Short title.

1. This act shall be known and may be cited as the "Brain Injury Research Act."

C.52:9EE-2 Definitions relative to brain injury research.

2. As used in this act:

"Approved research project" means a scientific research project, which is approved by the commission and which focuses on the treatment and cure of brain injuries.

"Commission" means the New Jersey State Commission on Brain Injury Research established pursuant to this act.

"Institutional support services" means all services, facilities, equipment, personnel and expenditures associated with the creation and maintenance of approved research projects.

"Qualifying research institution" means the University of Medicine and Dentistry of New Jersey and Rutgers, The State University of New Jersey and any other institution approved by the commission, which is conducting an approved research project.

C.52:9EE-3 New Jersey State Commission on Brain Injury Research.

3. a. There is established in the Executive Branch of the State government, the New Jersey State Commission on Brain Injury Research. For the purposes

of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated within the Department of Health and Senior Services, but notwithstanding that allocation, the commission shall be independent of any supervision or control by the department or by any board or officer thereof.

b. The commission shall consist of 11 members, including the Commissioner of Health and Senior Services, or his designee, who shall serve *ex officio*; one representative of the University of Medicine and Dentistry of New Jersey; one representative of Rutgers, The State University of New Jersey; six public members, appointed by the Governor with the advice and consent of the Senate, one of whom shall be a licensed physician in this State and one of whom shall be a person with a brain injury; and two public members, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker of the General Assembly. All public members shall be residents of the State or otherwise associated with the State, and shall be known for their knowledge, competence, experience or interest in brain injury medical research.

c. The term of office of each public member shall be three years, but of the members first appointed, three shall be appointed for terms of one year, three for terms of two years, and two for terms of three years. All vacancies shall be filled for the balances of the unexpired terms in the same manner as the original appointments. Appointed members are eligible for reappointment upon the expiration of their terms. A member shall continue to serve upon the expiration of his term until a successor is appointed.

The members of the commission shall not receive compensation for their services, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the commission.

C.52:9EE-4 Duties of commission.

4. The commission shall:

a. Review and authorize approved research projects, emphasizing projects that study nerve regeneration as a means to a cure for brain injury, and may establish an independent scientific advisory panel composed of scientists and clinicians who are not members of the commission to review proposals submitted to the commission and make funding recommendations to the commission;

b. Apportion all available funds to qualifying research institutions to finance approved research projects and necessary institutional support services;

c. Ensure that funds so apportioned to approved research projects are not diverted to any other use;

d. Take steps necessary to encourage the development within the State of brain injury research projects;

- e. Compile a directory of all brain injury research projects being conducted in the State; and
- f. Provide the Governor and the Legislature with a report by January 30 of each year describing the status of the commission's activities and the results of its funded research efforts.

C.52:9EE-5 Authority of commission.

- 5. The commission is authorized to:
 - a. Adopt rules and regulations concerning the operation of the commission, the functions and responsibilities of its officers and employees, the use of moneys from the "New Jersey Brain Injury Research Fund" established pursuant to section 9 of P.L.2003, c.200 (C.52:9EE-9) to meet the operating expenses of the commission, and other matters as may be necessary to carry out the purposes of this act;
 - b. Maintain offices at such places within the State as it may designate;
 - c. Employ an executive director and other personnel as may be necessary, whose employment shall be in the unclassified service of the State, except that employees performing stenographic or clerical duties shall be appointed pursuant to Title 11A (Civil Service) of the New Jersey Statutes;
 - d. Design a fair and equitable system for the solicitation, evaluation and approval of proposals for brain injury research projects;
 - e. Apply for and accept any grant of money from the federal government, which may be available for programs relating to research on brain injury;
 - f. Enter into contracts with individuals, organizations and institutions necessary or incidental to the performance of its duties and the execution of its powers under this act; and
 - g. Accept gifts, grants and bequests of funds from individuals, foundations, corporations, governmental agencies and other organizations and institutions.

C.52:9EE-6 Election of officers.

- 6. The commission shall annually elect a chairman and a vice-chairman from among its members. The chairman shall be the chief executive officer of the commission, shall preside at all meetings of the commission and shall perform other duties that the commission may prescribe.

The executive director shall serve as secretary to the commission and shall carry out its policies under the direction of the chairman.

C.52:9EE-7 Direct applications for funds.

- 7. Nothing in this act shall preclude a qualifying research institution or any other research facility in the State from directly applying for or receiving funds from any public or private agency to conduct brain injury research.

C.52:9EE-8 Central registry of persons who sustain brain injuries.

8. a. The commission shall establish and maintain, in conjunction with the Department of Health and Senior Services, a central registry of persons who sustain brain injuries other than through disease, whether or not the injury results in a permanent disability, in order to provide a database that indicates the incidence and prevalence of brain injuries and that will serve as a resource for research, evaluation and information on brain injuries and available services.

b. The commission shall require the reporting of all cases of brain injuries, except those caused through disease, and the submission of specified additional information on reported cases as it deems necessary and appropriate.

The commission shall, by regulation, specify the health care facilities and providers required to make the report of a brain injury to the registry, information that shall be included in the report to the registry, the method for making the report and the time period in which the report shall be made.

c. The reports made pursuant to this section are to be used only by the commission and the Department of Health and Senior Services and such other agencies as may be designated by the commission or the department and shall not otherwise be divulged or made public so as to disclose the identity of any person to whom they relate; and to that end, the reports shall not be included under materials available to public inspection pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

d. No individual or organization providing information to the commission in accordance with this section shall be deemed to be, or held liable for, divulging confidential information. Nothing in this section shall be construed to compel any individual to submit to medical, commission or department examination or supervision.

e. A health care facility or health care provider who is required to report a brain injury to the commission and who fails to comply with the provisions of this section shall be liable to a penalty of up to \$100 per unreported brain injury case. A penalty sued for under the provisions of this section shall be recovered by and in the name of the commission and shall be deposited in the "New Jersey Brain Injury Research Fund" established pursuant to this act.

C.52:9EE-9 "New Jersey Brain Injury Research Fund."

9. a. There is established in the Department of the Treasury a nonlapsing revolving fund to be known as the "New Jersey Brain Injury Research Fund." This fund shall be the repository for moneys provided pursuant to subsection f. of R.S.39:5-41. Moneys deposited in the fund, and any interest earned thereon, shall be used for the purpose of making grants for brain injury research projects at qualified research institutions approved by the New Jersey State

Commission on Brain Injury Research, and for the purpose of meeting the operating expenses of the commission.

b. Any costs incurred by the department in the collection or administration of the fund may be deducted from the funds deposited therein, as determined by the Director of the Division of Budget and Accounting.

10. R.S.39:5-41 is amended to read as follows:

Fines, penalties, forfeitures, disposition of; exceptions.

39:5-41. a. All fines, penalties and forfeitures imposed and collected under authority of law for any violations of R.S.39:4-63 and R.S.39:4-64 shall be forwarded by the judge to whom the same have been paid to the proper financial officer of a county, if the violation occurred within the jurisdiction of that county's central municipal court, established pursuant to N.J.S.2B:12-1 et seq. or the municipality wherein the violation occurred, to be used by the county or municipality to help finance litter control activities in addition to or supplementing existing litter pickup and removal activities in the municipality.

b. Except as otherwise provided by subsection a. of this section, all fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, other than those violations in which the complaining witness is the director, a member of his staff, a member of the State Police, a member of a county police department and force or a county park police system in a county that has established a central municipal court, an inspector of the Board of Public Utilities, or a law enforcement officer of any other State agency, shall be forwarded by the judge to whom the same have been paid as follows: one-half of the total amount collected to the financial officer, as designated by the local governing body, of the respective municipalities wherein the violations occurred, to be used by the municipality for general municipal use and to defray the cost of operating the municipal court; and one-half of the total amount collected to the proper financial officer of the county wherein they were collected, to be used by the county as a fund for the construction, reconstruction, maintenance and repair of roads and bridges, snow removal, the acquisition and purchase of rights-of-way, and the purchase, replacement and repair of equipment for use on said roads and bridges therein. Up to 25% of the money received by a municipality pursuant to this subsection, but not more than the actual amount budgeted for the municipal court, whichever is less, may be used to upgrade case processing.

All fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, in which the complaining witness is a member of a county police department and force or a county park police system in a county that has established a central municipal court, shall be forwarded by the judge to whom the same have been paid to the financial

officer, designated by the governing body of the county, for all violations occurring within the jurisdiction of that court, to be used for general county use and to defray the cost of operating the central municipal court.

Whenever any county has deposited moneys collected pursuant to this section in a special trust fund in lieu of expending the same for the purposes authorized by this section, it may withdraw from said special trust fund in any year an amount which is not in excess of the amount expended by the county over the immediately preceding three-year period from general county revenues for said purposes. Such moneys withdrawn from the trust fund shall be accounted for and used as are other general county revenues.

c. (Deleted by amendment, P.L.1993, c.293.)

d. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. In addition, upon the forfeiture of bail, \$1 of that forfeiture shall be forwarded to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Body Armor Replacement" fund established pursuant to section 1 of P.L.1997, c.177 (C.52:17B-4.4). Beginning in the fiscal year next following the effective date of this act, the State Treasurer annually shall allocate from those moneys so forwarded an amount not to exceed \$400,000 to the Department of Personnel to be expended exclusively for the purposes of funding the operation of the "Law Enforcement Officer Crisis Intervention Services" telephone hotline established and maintained under the provisions of P.L.1998, c.149 (C.11A:2-25 et al.).

e. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Spinal Cord Research Fund" established pursuant to section 9 of P.L.1999, c.201 (C.52:9E-9). In order to comply with the provisions of Article VIII, Section II, paragraph 5 of the State Constitution, a municipal or county agency which forwards moneys to the State Treasurer pursuant to this subsection may retain an amount equal to 2% of the moneys which it collects pursuant to this subsection as compensation for its administrative costs associated with implementing the provisions of this subsection.

f. Notwithstanding the provisions of subsections a. and b. of this section, during the period beginning on the effective date of this act and ending five

years thereafter, \$1 shall be added to the amount of each fine and penalty imposed and collected through a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "Autism Medical Research and Treatment Fund" established pursuant to section 1 of P.L.2003, c.144 (C.30:6D-62.2).

g. Notwithstanding the provisions of subsection a. and b. of this section, \$2 shall be added to the amount of each fine and penalty imposed and collected by a court under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Forensic DNA Laboratory Fund" established pursuant to P.L.2003, c.183. Prior to depositing the moneys into the fund, the State Treasurer shall forward to the Administrative Office of the Courts an amount not to exceed \$475,000 from moneys initially collected pursuant to this subsection to be used exclusively to establish a collection mechanism and to provide funding to update the Automated Traffic System Fund created pursuant to N.J.S.2B:12-30 to implement the provisions of this subsection.

The authority to impose additional fines and penalties under this subsection shall take effect 90 days after the effective date of P.L.2003, c.183 and shall expire five years thereafter. Not later than the 180th day prior to such expiration, the Attorney General shall prepare and submit to the Governor and the Legislature a report on the collection and use of DNA samples under P.L.1994, c.136. The report shall cover the period beginning on that effective date and ending four years thereafter. The report shall indicate separately, for each one-year period during those four years that begins on that effective date or an anniversary thereof, the number of each type of biological sample taken and the total cost of taking that type of sample, and also the number of identifications and exonerations achieved through the use of the samples. In addition, the report shall evaluate the effectiveness, including cost effectiveness, of having the samples available to further police investigations and other forensic purposes.

h. Notwithstanding the provisions of subsections a. and b. of this section, \$1 shall be added to the amount of each fine and penalty imposed and collected under authority of any law for any violation of the provisions of Title 39 of the Revised Statutes or any other motor vehicle or traffic violation in this State and shall be forwarded by the person to whom the same are paid to the State Treasurer. The State Treasurer shall annually deposit those moneys so forwarded in the "New Jersey Brain Injury Research Fund" established pursuant

to section 9 of P.L.2003, c.200 (C.52:9EE-9). The Administrative Office of the Courts may retain an amount equal to \$475,000 from the moneys which it initially collects pursuant to this subsection, prior to depositing any moneys in the "New Jersey Brain Injury Research Fund," in order to meet the expenses associated with utilizing the Automated Traffic System Fund created pursuant to N.J.S.2B:12-30 to implement the provisions of this subsection and serve other statutory purposes.

C.52:9EE-10 Regulations.

11. The commission shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to carry out the provisions of this act.

12. This act shall take effect on the 180th day following enactment.

Approved January 2, 2004.

CHAPTER 201

AN ACT concerning the New Jersey Human Relations Council and amending P.L.1997, c.257.

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

1. Section 1 of P.L.1997, c.257 (C.52:9DD-8) is amended to read as follows:

C.52:9DD-8 New Jersey Human Relations Council.

1. a. There is hereby created the New Jersey Human Relations Council, referred to hereinafter as the council, which shall promote prejudice reduction education and address the problem of bias and violent acts based on the victim's race, color, religion, national origin, ethnicity, sexual orientation, gender or disability. The council shall be a permanent, independent body in but not of the Department of Law and Public Safety.

b. The council shall consist of an executive committee which shall include ten public members who shall be representative of the various ethnic; religious; national origin; racial; sexual orientation; gender; and disabilities organizations in this State, of whom four shall be appointed by the Governor, no more than two of whom shall be of the same political party; three shall be appointed by the President of the Senate, no more than two of whom shall be of the same political party; and three shall be appointed by the Speaker of the General

Assembly, no more than two of whom shall be of the same political party; two members of the Senate appointed by the President of the Senate, no more than one of whom shall be of the same political party; two members of the General Assembly appointed by the Speaker of the General Assembly, no more than one of whom shall be of the same political party; seven representatives from county human relations commissions representing the diversity of all county human relations commissions from the 21 counties of the State appointed by the Governor; and the following ex officio members: the Attorney General of the State of New Jersey; the Secretary of State; Commissioner of the Department of Education; the Commissioner of the Department of Community Affairs; the Commissioner of the Department of Corrections; the Commissioner of the Department of Human Services; the Public Defender; the Director of the Administrative Office of the Courts; the Director of the Division of Criminal Justice; the Superintendent of the Division of State Police; the Director of the Division on Civil Rights; the President of the County Prosecutors Association of New Jersey; the President of the New Jersey State Association of Chiefs of Police; the President of the Bias Crime Officers Association of New Jersey; a county Superintendent of Schools selected by the Commissioner of the Department of Education; the President of the New Jersey Principals and Supervisors Association; and the President of the New Jersey Education Association.

c. Of the public members first appointed to the council, six shall be appointed for a term of three years, two shall be appointed for terms of two years and two shall be appointed for a term of one year. The seven county human relations commissions representatives shall be appointed for terms of two years. The legislative members appointed initially under this act shall serve until the end of the legislative session in which the appointment is made. Thereafter, the legislative members shall be appointed for two-year terms to coincide with the two-year legislative term in which they serve on the council. Thereafter, the public members shall be appointed for terms of three years. Vacancies on the council shall be filled in the same manner as the original appointment but for the unexpired term. A chairperson and vice-chairperson shall be selected from among the public members of the council and the representatives from the county human relations commissions. The council shall have the authority to establish subcommittees as it deems appropriate and pursuant to this act. The executive committee of the council shall adopt bylaws to govern the council and elect officers from among the council members as it deems appropriate and pursuant to this act.

d. Each ex officio member may designate a person from the member's department or agency to represent the member at hearings of the council. All designees may lawfully vote and otherwise act on behalf of the member for whom they constitute the designee.

2. This act shall take effect immediately.

Approved January 2, 2004.

CHAPTER 202

AN ACT concerning the issuance of bail bonds by surety companies.

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

C.17:31-10 Definitions relative to issuance of bail bonds by surety companies.

1. As used in this act:

"Bail agent or agency" means any person or entity that solicits, negotiates or sells bail bonds, or is affiliated in any manner with the execution of bail and is licensed as a limited lines insurance producer pursuant to P.L.2001, c.210 (C.17:22A-26 et seq.), an insurance producer or a limited insurance representative.

"Commissioner" means the Commissioner of Banking and Insurance.

"Surety company" means an insurer authorized to transact surety business in this State.

C.17:31-11 Temporary suspension, fines, restoration.

2. a. Upon receipt of a certification from the Clerk of the Superior Court stating that a bail agent or agency has failed to provide full, accurate and truthful information to the Clerk of the Superior Court as required by section 4 of this act, or has failed to satisfy a judgment or judgments for forfeited bail, the commissioner shall notify the bail agent or agency that its authority to negotiate, solicit or sell bail bonds, or be affiliated in any manner with the execution of bail bonds in this State shall be temporarily suspended. Upon receipt of a certification from the Clerk of the Superior Court that a surety company has failed to register or provide full, accurate and truthful information to the Clerk of the Superior Court, as required by section 4 of this act or has failed to satisfy a judgment for forfeited bail, the commissioner may temporarily suspend the surety company's authority to negotiate, solicit or sell bail bonds, or be affiliated in any manner with the execution of bail bonds in this State. The temporary suspensions imposed in accordance with this section shall remain in effect until the Clerk of the Superior Court notifies the commissioner that the surety company or bail agent or agency has properly registered and has provided information in accordance with section 4 of this act or has satisfied the judgment or judgments for forfeited bail.

b. In addition to any temporary suspension imposed pursuant to subsection a. of this section, the commissioner, after notice and an opportunity for a hearing, shall impose a fine against the surety company, bail agent or agency in an amount of up to \$10,000 for a first violation, up to \$25,000 for a second violation and up to \$100,000 for a third or subsequent violation for failure to register or provide full, accurate and truthful information to the Clerk of the Superior Court, as required by section 4 of this act or for failure to satisfy a judgment or judgments for forfeited bail.

c. The commissioner shall not restore the surety company's authority to negotiate, solicit or sell bail bonds, or be affiliated in any manner with the execution of bail bonds in this State, until the surety company has demonstrated that it has satisfied all judgments or court orders related to forfeited bail and has paid all fines imposed pursuant to this act.

d. Nothing in this act shall be construed to limit, preclude or otherwise adversely affect the commissioner's ability to pursue enforcement actions against the surety company, bail agent or agency resulting from violations of the insurance laws arising from the breach of the duties owed to the courts as provided in subsection a. of this section.

C.17:31-12 Deposit of amount of order or judgment on appeal.

3. Whenever a surety company, or bail agent or agency acting on its behalf, files an appeal in the Superior Court of New Jersey, Appellate Division, or the Supreme Court of New Jersey, from a judgment or order entered against it by a court to enforce the forfeiture of a bail bond pursuant to the Rules Governing the Courts of the State of New Jersey, the surety company shall deposit the full amount of the order or judgment in cash or by certified, cashiers or bank check with the Clerk of the Superior Court or Supreme Court, as appropriate. The court may allow the posting of a supersedeas bond, in a form approved by the court, upon the showing of good cause; provided, however, that good cause shall not mean an application by a surety to extend the time to forfeit a bond, to stay payment of a forfeiture of default judgment, or to extend the time to locate a defendant.

C.17:31-13 Registration by surety company of bail agent, agency.

4. a. A surety company shall register with the Clerk of the Superior Court the name and address of each bail agent or agency authorized by the surety company to write bail. The surety company shall provide written notice to the Clerk of the Superior Court when any bail agent or agency authorized to write bail is terminated or is no longer authorized by the surety company to write bail.

b. With respect to each bail agent or agency set forth in subsection a. of this section, the surety company shall disclose the name and address of any bail agent or agency that has provided a guarantee to the surety company

for the satisfaction of any forfeited bail or bail forfeiture judgments entered against that surety company written by such bail agent or agency. The registration and disclosure shall include a certification by each listed bail agent or agency stating that the information provided is true and accurate.

c. Any surety company, or bail agent or agency, failing to register with the Clerk of the Superior Court, or failing to provide full, accurate and truthful information to the Clerk of the Superior Court, in accordance with the provisions of subsections a. and b. of this section shall be subject to the penalties set forth in section 2 of this act.

d. In addition to the information required in subsections a. and b. of this section, surety companies and bail agents or agencies shall provide any other information that the Rules Governing the Courts of the State of New Jersey may require.

C.17:31-14 Construction of act relative to authority of the courts.

5. Nothing in this act shall be construed to limit, prohibit or otherwise adversely affect the authority of the Supreme Court of New Jersey to adopt rules or issue directives or procedures to preclude a surety company, or its bail agents or agencies, from negotiating, soliciting or selling bail bonds on behalf of any defendant charged with a criminal or quasi-criminal offense pending in the Superior Court or in a municipal court of this State.

C.17:31-15 Rules, regulations.

6. The commissioner may promulgate rules and regulations in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act.

7. This act shall take effect immediately

Approved January 2, 2004.

CHAPTER 203

AN ACT concerning human stem cell research and supplementing Title 26 of the Revised Statutes and Title 2C of the New Jersey Statutes.

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

C.26:2Z-1 Findings, declarations relative to human stem cell research.

1. The Legislature finds and declares that:

a. An estimated 128 million Americans suffer from the crippling economic and psychological burden of chronic, degenerative and acute diseases, including Alzheimer's disease, cancer, diabetes and Parkinson's disease;

b. The costs of treating, and lost productivity from, chronic, degenerative and acute diseases in the United States constitutes hundreds of billions of dollars annually. Estimates of the economic costs of these diseases does not account for the extreme human loss and suffering associated with these conditions;

c. Human stem cell research offers immense promise for developing new medical therapies for these debilitating diseases and a critical means to explore fundamental questions of biology. Stem cell research could lead to unprecedented treatments and potential cures for Alzheimer's disease, cancer, diabetes, Parkinson's disease and other diseases;

d. The United States has historically been a haven for open scientific inquiry and technological innovation; and this environment, combined with the commitment of public and private resources, has made this nation the preeminent world leader in biomedicine and biotechnology;

e. The biomedical industry is a critical and growing component of New Jersey's economy, and would be significantly diminished by limitations imposed on stem cell research;

f. Open scientific inquiry and publicly funded research will be essential to realizing the promise of stem cell research and maintaining this State's leadership in biomedicine and biotechnology. Publicly funded stem cell research, conducted under established standards of open scientific exchange, peer review and public oversight, offers the most efficient and responsible means of fulfilling the promise of stem cells to provide regenerative medical therapies;

g. Stem cell research, including the use of embryonic stem cells for medical research, raises significant ethical and public policy concerns; and, although not unique, the ethical and policy concerns associated with stem cell research must be carefully considered; and

h. The public policy of this State governing stem cell research must: balance ethical and medical considerations, based upon both an understanding of the science associated with stem cell research and a thorough consideration of the ethical concerns regarding this research; and be carefully crafted to ensure that researchers have the tools necessary to fulfill the promise of this research.

C.26:2Z-2 Public policy relative to derivation, use of certain cells of humans.

2. a. It is the public policy of this State that research involving the derivation and use of human embryonic stem cells, human embryonic germ cells and human adult stem cells, including somatic cell nuclear transplantation, shall:

(1) be permitted in this State;

(2) be conducted with full consideration for the ethical and medical implications of this research; and

(3) be reviewed, in each case, by an institutional review board operating in accordance with applicable federal regulations.

b. (1) A physician or other health care provider who is treating a patient for infertility shall provide the patient with timely, relevant and appropriate information sufficient to allow that person to make an informed and voluntary choice regarding the disposition of any human embryos remaining following the infertility treatment.

(2) A person to whom information is provided pursuant to paragraph (1) of this subsection shall be presented with the option of storing any unused embryos, donating them to another person, donating the remaining embryos for research purposes, or other means of disposition.

(3) A person who elects to donate, for research purposes, any embryos remaining after receiving infertility treatment shall provide written consent to that donation.

c. (1) A person shall not knowingly, for valuable consideration, purchase or sell, or otherwise transfer or obtain, or promote the sale or transfer of, embryonic or cadaveric fetal tissue for research purposes pursuant to this act; however, embryonic or cadaveric fetal tissue may be donated for research purposes in accordance with the provisions of subsection b. of this section or other applicable State or federal law.

For the purposes of this subsection, "valuable consideration" means financial gain or advantage, but shall not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation of embryonic or cadaveric fetal tissue.

(2) A person or entity who violates the provisions of this subsection shall be guilty of a crime of the third degree and, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, shall be subject to a fine of up to \$50,000 for each violation.

C.2C:11A-1 Cloning of human being, first degree crime; definition.

3. A person who knowingly engages or assists, directly or indirectly, in the cloning of a human being is guilty of a crime of the first degree.

As used in this section, "cloning of a human being" means the replication of a human individual by cultivating a cell with genetic material through the egg, embryo, fetal and newborn stages into a new human individual.

4. This act shall take effect immediately.

Approved January 2, 2004.

CHAPTER 204

AN ACT concerning motor vehicles, amending P.L.1979, c.261, P.L.1950, c.127, R.S.39:3-4 and R.S.39:3-13, and supplementing chapter 3 of Title 39 of the Revised Statutes.

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

1. Section 1 of P.L.1979, c.261 (C.39:3-10f) is amended to read as follows:

C.39:30-10f Initial license, renewal, digitized color picture of licensee required; exceptions.

1. In addition to the requirements for the form and content of a motor vehicle driver's license under R.S.39:3-10 and a provisional license issued under section 4 of P.L.1950, c.127 (C.39:3-13.4), on and after the operative date of P.L.2001, c.391 (C.39:3-10f4 et al.), each initial New Jersey license, each renewal of a New Jersey driver's license, and each provisional license shall have a digitized color picture of the licensee. All licenses issued on and after January 1, 2000 shall be valid for a period of 48 calendar months. However, the chief administrator may, at his discretion, issue licenses and endorsements which shall expire on a date fixed by him. The fee for such licenses or endorsements shall be fixed in amounts proportionately less or greater than the fee otherwise established. Notwithstanding the provisions of this section to the contrary, a person 70 years of age or older may elect to have a license issued for a period of two or four years, which election may not be altered by the director. The fee for the two-year license shall be \$9, in addition to the fee for a digitized picture established in section 4 of P.L.2001, c.391 (C.39:3-10f4). The chief administrator may, for good cause extend a license and any endorsement thereon beyond their expiration dates for periods not to exceed 12 additional months. The chief administrator may extend the expiration date of a license and any endorsement thereon without payment of a proportionate fee when the chief administrator determines that such extension is necessary for good cause. If any license and endorsements thereon are so extended, the licensee shall pay upon renewal the full license fee for the period fixed by the chief administrator as if no extension had been granted.

Each initial motor vehicle license issued to a person under the age of 21 after the effective date of P.L.1999, c.28 shall be conspicuously distinct, through the use of color and design, from the driver's licenses issued to persons 21 years of age or older. The chief administrator, in consultation with the Superintendent of State Police, shall determine the color and the manner in which the license is designed to achieve this result. The license shall also bear the words "UNDER 21" in a conspicuous manner. The chief administrator

shall provide that upon attaining the age of 21, a licensee shall be issued a replacement driver's license or a new license, as appropriate. The fee for a replacement license shall be \$5 in addition to the digitized picture fee.

As conditions for the renewal of a driver's license, the chief administrator shall provide that the picture of a licensee be updated except that the chief administrator may elect to use a stored picture to renew a license for a period not exceeding four additional years for \$18 in addition to the digitized picture fee.

Whenever a person has reconstructive or cosmetic surgery which significantly alters the person's facial features, the person shall notify the chief administrator who may require the picture of the licensee to be updated, for \$5 in addition to the digitized picture fee.

Nothing in this section shall be construed to alter or change any expiration date on any New Jersey driver's license issued prior to the operative date of P.L.2001, c.391 (C.39:3-10f4 et al.) and, unless a licensee's driving privileges are otherwise suspended or revoked, except as provided in R.S.39:3-10, that license shall remain valid until that expiration date.

Specific use of the driver's license and any information stored or encoded, electronically or otherwise, in relation thereto shall be in accordance with P.L.1997, c.188 (C.39:2-3.3 et seq.) and the federal Driver's Privacy Protection Act of 1994, Pub. L.103-322. Notwithstanding the provisions of any other law to the contrary, the digitized picture or any access thereto or any use thereof shall not be sold, leased or exchanged for value.

To replace a photo-license issued prior to the effective date of this act for a licensee who is temporarily out of this State, the chief administrator may issue a "valid without picture" picture license for the unexpired term of the license.

2. Section 1 of P.L.1950, c.127 (C.39:3-13.1) is amended to read as follows:

C.39:3-13.1 Issuance of special learner's permit.

1. The Chief Administrator of the New Jersey Motor Vehicle Commission may issue to a person over 16 years of age a special learner's permit, under the hand and seal of the chief administrator, allowing such person, for the purpose of preparing himself to qualify for a provisional license for a passenger automobile by operating a dual pedal controlled motor vehicle while taking a required course of behind-the-wheel automobile driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State or a course of behind-the-wheel automobile driving instruction conducted by a drivers' school duly licensed pursuant to the provisions of P.L.1951, c.216 (C.39:12-1 et seq.). The special learner's

permit shall be issued in lieu of the examination permit provided for in R.S.39:3-13. In addition to requiring an applicant for a permit to submit satisfactory proof of identity and age, the chief administrator also shall require the applicant to provide, as a condition for obtaining a permit, satisfactory proof that the applicant's presence in the United States is authorized under federal law. If the chief administrator has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the chief administrator shall refuse to grant the permit until such time as the document may be verified by the issuing agency to the chief administrator's satisfaction.

The special learner's permit described above, when issued to a person taking a course of behind-the-wheel driving education conducted in a public, parochial or private school, shall be retained in the office of the school principal at all times except during such time as the person to whom the permit is issued is undergoing behind-the-wheel automobile driving instruction. The chief administrator may make such rules and regulations as he may deem necessary to carry out the provisions of this section.

3. R.S.39:3-4 is amended to read as follows:

Registration of automobiles and motorcycles, application, registration certificates; expiration; issuance; violations; notification.

39:3-4. Except as hereinafter provided, every resident of this State and every nonresident whose automobile or motorcycle shall be driven in this State shall, before using such vehicle on the public highways, register the same, and no automobile or motorcycle shall be driven unless so registered.

Such registration shall be made in the following manner: An application in writing, signed by the applicant or by an agent or officer, in case the applicant is a corporation, shall be made to the chief administrator or the chief administrator's agent, on forms prepared and supplied by the chief administrator, containing the name, street address of the residence or the business of the owner, mailing address, if different from the street address of the owner's residence or business, and age of the owner, together with a description of the character of the automobile or motorcycle, including the name of the maker and the vehicle identification number, or the manufacturer's number or the number assigned by the chief administrator if the vehicle does not have a vehicle identification number, and any other statement that may be required by the chief administrator. A post office box shall appear on the application only as part of a mailing address that is submitted by the owner, agent or officer, as the case may be, in addition to the street address of the applicant's residence or business; provided, however, the chief administrator, upon application, shall permit a person who was a victim of a violation of N.J.S.2C:12-10,

N.J.S.2C:14-2, or N.J.S.2C:25-17 et seq., or who the chief administrator otherwise determines to have good cause, to use as a mailing address a post office box, an address other than the applicant's address or other contact point. An owner whose last address appears on the records of the division as a post office box shall change his address on his application for renewal to the street address of his residence or business and, if different from his street address, his mailing address unless the chief administrator has determined, pursuant to this section, that the owner may use a post office box, an address other than the owner's address or other contact point as a mailing address. The application shall contain the name of the insurer of the vehicle and the policy number. If the vehicle is a leased motor vehicle, the application shall make note of that fact and shall include along with the name and street address of the lessor the name, street address and driver license number of the lessee. A lessor of a leased motor vehicle shall notify the chief administrator in writing, on such form as the chief administrator may prescribe, of the termination of a lease or of a change of the lessee within seven days after the termination or change.

Thereupon the chief administrator shall have the power to grant a registration certificate to the owner of any motor vehicle, if over 17 years of age, application for the registration having been properly made and the fee therefor paid, and the vehicle being of a type that complies with the requirements of this title. The form and contents of the registration certificate to be issued shall be determined by the chief administrator.

If the vehicle is a leased motor vehicle, the registration certificate shall, in addition to containing the name and street address of the lessor, identify the vehicle as a leased motor vehicle.

The chief administrator shall maintain a record of all registration certificates issued, and of the contents thereof.

Every registration shall expire and the registration certificate thereof become void on the last day of the twelfth calendar month following the calendar month in which the certificate was issued; provided, however, that the chief administrator may, at his discretion, require registrations which shall expire, and issue certificates thereof which shall become void, on a date fixed by him, which date shall not be sooner than three months nor later than 26 months after the date of issuance of such certificates, and the fees for such registrations, including any other fees or charges collected in connection with the registration fee, shall be fixed by the chief administrator in amounts proportionately less or greater than the fees established by law. The chief administrator may fix the expiration date for registration certificates at a date other than 12 months if the chief administrator determines that the change is necessary, appropriate or convenient in order to aid in implementing the vehicle inspection requirements of chapter 8 of Title 39 or for other good cause. The chief

administrator may, for good cause extend a registration beyond the expiration date that appears upon the registration certificate for periods not to exceed 12 additional months. The chief administrator may extend the expiration date of a registration without payment of a proportionate fee when the chief administrator determines that such extension is necessary for good cause. If any registration is so extended, the owner shall pay upon renewal the full registration fee for the period fixed by the chief administrator as if no extension had been granted.

All motorcycles for which registrations have been issued prior to the effective date of P.L. 1989, c. 167 and which are scheduled to expire between November 1 and March 31 shall, upon renewal, be issued registrations by the chief administrator which shall expire on a date fixed by him, but in no case shall that expiration date be earlier than April 30 nor later than October 31. The fees for the renewal of the motorcycle registrations authorized under this paragraph shall be fixed by the chief administrator in an amount proportionately less or greater than the fee established by R.S.39:3-21.

Application forms for all renewals of registrations for passenger automobiles shall be sent to the last addresses of owners of motor vehicles and motorcycles, as they appear on the records of the division.

No person owning or having control over any unregistered vehicle shall permit the same to be parked or to stand on a public highway.

Any police officer is authorized to remove any unregistered vehicle from the public highway to a storage space or garage, and the expense involved in such removal and storing of the vehicle shall be borne by the owner of the vehicle, except that the expense shall be borne by the lessee of a leased vehicle.

Any person violating the provisions of this section shall be subject to a fine not exceeding \$100, except that for the misstatement of any fact in the application required to be made to the chief administrator, the person making such statement or omitting the statement that the motor vehicle is to be used as a leased motor vehicle when that is the case shall be subject to the penalties provided in R.S.39:3-37.

The chief administrator may extend the expiration date of a registration certificate without payment of a proportionate fee when the chief administrator determines that such extension is necessary, appropriate or convenient to the implementation of vehicle inspection requirements. If any registration certificate is so extended, the owner shall pay upon renewal the full registration fee for the period fixed by the chief administrator as if no extension had been granted.

The New Jersey Motor Vehicle Commission shall make a reasonable effort to notify any lessor whose name and address is on file with the commission, or any other lessor the commission may determine it is necessary to notify, of the requirements of this amendatory act.

4. R.S.39:3-13 is amended to read as follows:

Examination permits.

39:3-13. The chief administrator may, in his discretion, issue to a person over 17 years of age an examination permit, under the hand and seal of the chief administrator, allowing such person, for the purpose of fitting himself to become a licensed driver, to operate a designated class of motor vehicles other than passenger automobiles and motorcycles of persons licensed to operate motorcycles only for a specified period of not more than 90 days, while in the company and under the supervision of a driver licensed to operate such designated class of motor vehicles.

The chief administrator, in his discretion, may issue for a specified period of not less than one year a passenger automobile or motorcycle-only examination permit to a person over 17 years of age regardless of whether a person has completed a course of behind-the-wheel automobile driving education pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1). An examination permit applicant who is under 18 years of age shall obtain the signature of a parent or guardian for submission to the commission on a form prescribed by the chief administrator. The chief administrator shall postpone for six months the driving privileges of any person who submits a fraudulent signature for a parent or guardian.

For six months immediately following the validation of an examination permit, and until the holder passes the road test, the holder who is less than 21 years of age shall operate the passenger automobile or motorcycle only when accompanied by, and under the supervision of, a New Jersey licensed driver who is at least 21 years of age and has been licensed to drive a passenger automobile or motorcycle, as the case may be, for not less than three years. The holder of an examination permit who is at least 21 years of age shall operate the passenger automobile or motorcycle for the first three months under such supervision and until the holder passes the road test. The supervising driver of the passenger automobile shall sit in the front seat of the vehicle. Whenever operating a vehicle while in possession of an examination permit, the holder of the permit shall operate the passenger automobile with only one additional passenger in the vehicle excluding persons with whom the holder resides, except that this passenger restriction shall not apply when either the permit holder or one other passenger is at least 21 years of age. Further, the holder of the permit who is less than 21 years of age shall not drive during the hours between 12:01 a.m. and 5 a.m.; provided, however, that this condition may be waived for an emergency which, in the judgment of local police, is of sufficient severity and magnitude to substantially endanger the health, safety, welfare or property of a person, or for any bona fide employment or religion-related activity if the employer or appropriate religious authority

provides written verification of such activity in a manner provided for by the director. The holder of the examination permit shall not use any interactive wireless communication device, except in an emergency, while operating a moving passenger automobile on a public road or highway. "Use" shall include, but not be limited to, talking or listening on any interactive wireless communication device or operating its keys, buttons or other controls. The passenger automobile permit holder shall ensure that all occupants of the vehicle are secured in a properly adjusted and fastened seat belt or child restraint system.

When notified by a court of competent jurisdiction that an examination permit holder has been convicted of a violation which causes the permit holder to accumulate more than two motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.189 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5; subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the chief administrator deems significant and applicable pursuant to regulation, in addition to any other penalty that may be imposed, the chief administrator shall, without the exercise of discretion or a hearing, suspend the examination permit holder's examination permit for 90 days. The chief administrator shall restore the permit following the term of the permit suspension if the permit holder satisfactorily completes a remedial training course of not less than four hours which may be given by the commission, a drivers' school licensed by the chief administrator pursuant to section 2 of P.L.1951, c.216 (C.39:12-2) or any Statewide safety organization approved by the chief administrator. The course shall be subject to oversight by the commission according to its guidelines. The permit holder shall also remit a course fee prior to the commencement of the course. The chief administrator also shall postpone without the exercise of discretion or a hearing the issuance of a basic license for 90 days if the chief administrator is notified by a court of competent jurisdiction that the examination permit holder, after completion of the remedial training course, has been convicted of any motor vehicle violation which results in the imposition of any motor vehicle points or has been convicted of a violation of R.S.39:4-50; section 2 of P.L.1981, c.512 (C.39:4-50.4a); P.L.1992, c.182 (C.39:4-50.14); R.S.39:4-129; N.J.S.2C:11-5, subsection c. of N.J.S.2C:12-1 or any other motor vehicle-related law the chief administrator deems significant and applicable pursuant to regulation. When the chief administrator is notified by a court of competent jurisdiction that an examination permit holder has been convicted of any alcohol or drug-related offense unrelated to the operation of a motor vehicle and is not otherwise subject to any other suspension penalty therefor, the chief administrator shall, without the exercise of discretion or a hearing, suspend the examination permit for six months.

An examination permit for a motorcycle or a commercial motor vehicle issued to a handicapped person, as determined by the New Jersey Motor Vehicle

Commission after consultation with the Department of Education, shall be valid for nine months or until the completion of the road test portion of his license examination, whichever period is shorter.

Each permit shall be sufficient license for the person to operate such designated class of motor vehicles in this State during the period specified, while in the company of and under the control of a driver licensed by this State to operate such designated class of motor vehicles, or, in the case of a commercial driver license permit, while in the company of and under the control of a holder of a valid commercial driver license for the appropriate license class and with the appropriate endorsements issued by this or any other state. Such person, as well as the licensed driver, except for a motor vehicle examiner administering a driving skills test, shall be held accountable for all violations of this subtitle committed by such person while in the presence of the licensed driver. In addition to requiring an applicant for an examination permit to submit satisfactory proof of identity and age, the chief administrator also shall require the applicant to provide, as a condition for obtaining the permit, satisfactory proof that the applicant's presence in the United States is authorized under federal law. If the chief administrator has reasonable cause to suspect that any document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the chief administrator shall refuse to grant the permit until such time as the document may be verified by the issuing agency to the chief administrator's satisfaction.

The holder of an examination permit shall be required to take a road test in order to obtain a provisional license. No road test for any person who has been issued an examination permit to operate a passenger vehicle shall be given unless the person has met the requirements of this section. No road test for a provisional license shall be given unless the applicant has first secured an examination permit and no such road test shall be scheduled for an applicant who has secured an examination permit for a passenger vehicle or a motorcycle for which an endorsement is not required until at least six months for an applicant under 21 years of age or three months for an applicant 21 years of age or older shall have elapsed following the validation of the examination permit for practice driving or, in the case of an examination permit for other vehicles, until 20 days have elapsed. In the case of an omnibus endorsement or school bus, no road test shall be scheduled until at least 10 days shall have elapsed. Every applicant for an examination permit to qualify for an omnibus endorsement or an articulated vehicle endorsement shall be a holder of a valid basic driver's license.

The required fees for special learners' permits and examination permits shall be as follows:

Basic driver's license up to \$10

Motorcycle license or endorsement	\$ 5
Omnibus or school bus endorsement	\$25

The chief administrator shall waive the payment of fees for issuance of examination permits for omnibus endorsements whenever the applicant establishes to the chief administrator's satisfaction that said applicant will use the omnibus endorsement exclusively for operating omnibuses owned by a nonprofit organization duly incorporated under Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes.

The specified period for which a permit is issued may be extended for not more than an additional 60 days, without payment of added fee, upon application made by the holder thereof, where the holder has applied to take the examination for a driver's license prior to the expiration of the original period for which the permit was issued and the chief administrator was unable to schedule an examination during said period.

As a condition for the issuance of an examination permit under this section, the chief administrator shall secure a digitized picture of the applicant. The picture shall be stored in a manner prescribed by the chief administrator and may be displayed on the examination permit.

The chief administrator may require that whenever a person to whom an examination permit has been issued has reconstructive or cosmetic surgery which significantly alters the person's facial features, the person shall notify the chief administrator who may require the picture of the person to be updated.

Specific use of the examination permit and any information stored or encoded, electronically or otherwise, in relation thereto shall be in accordance with P.L.1997, c.188 (C.39:2-3.3 et seq.) and the federal Driver's Privacy Protection Act of 1994, Pub. L.103-322. Notwithstanding the provisions of any other law to the contrary, the digitized picture or any access thereto or any use thereof shall not be sold, leased or exchanged for value.

C.39:3-10n Issuance of temporary driver's license.

5. Notwithstanding the provisions of any law to the contrary, the chief administrator may, at the chief administrator's discretion, issue a temporary driver's license that is valid without a digitized color picture of the licensee to New Jersey licensees who are serving in the military outside the State or who temporarily are residents of another state or foreign country.

The form and content of a temporary license issued under this section shall be prescribed by the chief administrator; shall bear the words "TEMPORARY LICENSE" in a conspicuous manner; and shall be valid for a period not to exceed 12 calendar months.

If the temporary licensee is under the age of 21 years, the temporary license shall bear the words "UNDER 21" in a conspicuous manner.

An applicant for a temporary driver's license shall submit such satisfactory proof of identity and age as the chief administrator shall require.

6. This act shall take effect immediately.

Approved January 6, 2004.

CHAPTER 205

AN ACT concerning certification of persons installing medical gas piping in certain facilities by the State Board of Examiners of Master Plumbers and amending and supplementing P.L.1968, c.362.

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

C.45:14C-28 Certification required for installation, maintenance of medical gas piping in certain facilities.

1. a. No person shall install, improve, repair or maintain medical gas piping unless certified by the State Board of Examiners of Master Plumbers in accordance with the provisions of this act.

b. No person shall provide instruction regarding the installation, improvement, repair or maintenance of medical gas piping unless certified by the State board in accordance with the provisions of this act.

For purposes of this act, "medical gas piping" means that medical gas piping within a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), located after the source valve and intended for patient use.

C.45:14C-28 Eligibility for certification.

2. a. Except as provided in subsection b. of this section, to be eligible to be certified to install, improve, repair or maintain medical gas piping, an applicant shall be of good moral character and submit to the State board satisfactory evidence that he:

(1) (a) is a master plumber, or a journeyman plumber who has successfully completed an apprenticeship program accredited and approved by the United States Department of Labor;

(b) is an apprentice plumber who has successfully completed not less than three years of an apprenticeship program accredited and approved by the United States Department of Labor;

(c) is a pipe fitter or steam fitter employed by a plumbing contractor; or

(d) is certified in his area of expertise in accordance with the National Fire Protection Association standards;

(2) has successfully completed not less than 32 hours of classroom training relating to the most recent edition of the Standard on Gas and Vacuum Systems issued by the National Fire Protection Association; and

(3) (a) has passed an examination offered by the National Inspection Testing and Certification Corporation (NITC), or a substantially equivalent examination approved by the State board, that demonstrates the applicant's competence to install, improve, repair and maintain medical gas piping;

(b) has passed an examination as a brazer offered by the American Welding Society, and has successfully completed a training program in the installation of medical gas piping approved by a major medical gas producer; or

(c) is certified in accordance with the appropriate American Society of Sanitary Engineering standards for the operations being performed.

The successful completion of any such examination provided for in this paragraph may have been accomplished before the effective date of this act.

b. To be eligible to be certified to perform only brazing duties incidental to the installation, improvement, repair or maintenance of medical gas piping, an applicant shall be of good moral character and submit to the State board satisfactory evidence that he:

(1) (a) is a master plumber, or a journeyman plumber who has successfully completed an apprenticeship program accredited and approved by the United States Department of Labor;

(b) is an apprentice plumber who has successfully completed not less than three years of an apprenticeship program accredited and approved by the United States Department of Labor;

(c) is a pipe fitter or steam fitter employed by a plumbing contractor; or

(d) is certified in his area of expertise in accordance with the National Fire Protection Association standards;

(2) has successfully completed not less than 20 hours of classroom training relating to the performance of brazing duties required in the installation, improvement, repair or maintenance of medical gas piping; and

(3) (a) has passed an examination offered by the National Inspection Testing and Certification Corporation (NITC), or a substantially equivalent examination approved by the State board, that demonstrates the applicant's competence in performing brazing duties incidental to the installation, improvement, repair or maintenance of medical gas piping;

(b) has passed an examination as a brazer offered by the American Welding Society and has successfully completed a training program in the brazing of medical gas piping approved by a major medical gas producer; or

(c) is certified in accordance with the appropriate American Society of Sanitary Engineering standards for the operations being performed.

The successful completion of any such examination provided for in this paragraph may have been accomplished before the effective date of this act.

C.45:14C-30 Requirements for certification.

3. To be eligible for certification to provide instruction regarding the installation, improvement, repair or maintenance of medical gas piping, an applicant shall fulfill the following requirements:

a. Be licensed as a master plumber or journeyman plumber in this State, or be a pipe fitter or steam fitter employed by a plumbing contractor; or

b. Have been actively engaged in the practice of installing medical gas piping or be certified in his area of expertise in accordance with the National Fire Protection Association standards for at least five consecutive years preceding the date of application for certification as an instructor;

c. Have successfully completed not less than 40 hours of instructional training in the field of medical gas piping installation, improvement, repair and maintenance as approved by the State board; and

d. (1) passed an examination offered by the National Inspection Testing and Certification Corporation (NITC), or a substantially equivalent examination approved by the State board, that demonstrates the applicant's competence to teach in the field of medical gas piping installation, improvement, repair and maintenance;

(2) passed an examination as a brazer offered by the American Welding Society and has successfully completed a training program in instructional training approved by a major medical gas producer; or

(3) is certified in accordance with the appropriate American Society of Sanitary Engineering standards for the operations being performed.

C.45:14C-31 Issuance of certificates.

4. a. The State board shall issue a certificate of certification to any applicant who, in the opinion of the State board, has satisfactorily met the requirements of this act.

b. The State board shall by rule or regulation establish, prescribe or change the fees for certificates or other services provided by the State board pursuant to the provisions of this act. Certificates for persons certified to install, improve, repair or maintain medical gas piping, or certified as instructors regarding the installation, improvement, repair or maintenance of medical gas piping shall be issued for a period of three years and be renewable. Certificates for persons performing only brazing duties incidental to the installation, improvement, repair or maintenance of medical gas piping shall be issued for a period of one year and be annually renewable.

c. Fees shall be established, prescribed or changed by the State board to the extent necessary to defray all proper expenses incurred by the State board and any staff employed to administer this act, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

d. All fees and any fines imposed by the State board shall be paid to the State board and shall be forwarded to the State Treasurer and become part of the General Fund.

C.45:14C-32 Certification for persons currently engaged in practice.

5. a. Any person who engaged in the installation, improvement, repair or maintenance of medical gas piping for not less than three consecutive years preceding the enactment date of this act may acquire certification as provided in subsection a. of section 2 of this act if that person has met the requirements specified in paragraph (3) of subsection a. of section 2 of this act no later than two years following the enactment date of this act.

b. Any person who performed only brazing duties incidental to the installation, improvement, repair or maintenance of medical gas piping for not less than three consecutive years preceding the enactment date of this act may acquire certification as provided in subsection b. of section 2 of this act if that person has met the requirements specified in paragraph (3) of subsection b. of section 2 of this act no later than two years following the enactment date of this act.

C.45:14C-33 Inapplicability of act.

6. The provisions of this act shall not apply to any electrical contractor licensed by the Board of Examiners of Electrical Contractors pursuant to P.L. 1962, c. 162 (C.45:5A-1 et seq.), and any person in his employ while performing the duties of his employment, who is acting within the scope of his profession or occupation.

7. Section 10 of P.L. 1968, c. 362 (C.45:14C-10) is amended to read as follows:

C.45:14C-10 Register of applications for State licenses, certificates of certification.

10. The State board shall keep a register of all applications for State licenses and certificates of certification, which register shall show: (a) name, age and residence of the applicant, (b) date of application, (c) principal place of business of applicant, (d) name and address of employer firm or corporation, if not self-employed, (e) whether or not an examination was required, (f) whether the applicant was accepted or rejected, (g) the number of the license or certificate of certification, if issued, (h) the date of the action of the State board, and (i) any other information prescribed by the State board.

8. This act shall take effect immediately, except that section 1 shall remain inoperative for 720 days following enactment.

Approved January 7, 2004.

CHAPTER 206

AN ACT concerning invasion of privacy and supplementing chapter 14 of Title 2C and Title 2A of the New Jersey Statutes.

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

C.2C:14-9 Invasion of privacy, degree of crime; defenses, privileges.

1. a. An actor commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, and under circumstances in which a reasonable person would know that another may expose intimate parts or may engage in sexual penetration or sexual contact, he observes another person without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

b. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

c. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure. For purposes of this subsection, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be imposed for a violation of this subsection.

d. It is an affirmative defense to a crime under this section that:

(1) the actor posted or otherwise provided prior notice to the person of the actor's intent to engage in the conduct specified in subsection a., b., or c., and

(2) the actor acted with a lawful purpose.

e. (1) It shall not be a violation of subsection a. or b. to observe another person in the access way, foyer or entrance to a fitting room or dressing room operated by a retail establishment or to photograph, film, videotape, record or otherwise reproduce the image of such person, if the actor conspicuously posts at the entrance to the fitting room or dressing room prior notice of his

intent to make the observations, photographs, films, videotapes, recordings or other reproductions.

(2) It shall be a violation of subsection c. to disclose in any manner any such photograph, film, videotape or recording of another person using a fitting room or dressing room except under the following circumstances:

(a) to law enforcement officers in connection with a criminal prosecution;
(b) pursuant to subpoena or court order for use in a legal proceeding; or
(c) to a co-worker, manager or supervisor acting within the scope of his employment.

f. It shall be a violation of subsection a. or b. to observe another person in a private dressing stall of a fitting room or dressing room operated by a retail establishment or to photograph, film, videotape, record or otherwise reproduce the image of another person in a private dressing stall of a fitting room or dressing room.

g. For purposes of this act, a law enforcement officer, or a corrections officer or guard in a correctional facility or jail, who is engaged in the official performance of his duties shall be deemed to be licensed or privileged to make and to disclose observations, photographs, films, videotapes, recordings or any other reproductions.

h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under subsection b. of this section shall not merge with a conviction under subsection c. of this section, nor shall a conviction under subsection c. merge with a conviction under subsection b.

C.2A:58D-1 Invasion of privacy with photographs, films, videotapes, liability, civil action; damages, costs.

2. a. An actor who, without license or privilege to do so, photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed, shall be liable to that person, who may bring a civil action in the Superior Court.

b. An actor who, without license or privilege to do so, discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed, shall be liable to that person, who may bring a civil action in the Superior Court. For purposes of this section, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer.

- c. The court may award:
- (1) actual damages, but not less than liquidated damages computed at the rate of \$1,000.00 for each violation of this act;
 - (2) punitive damages upon proof of willful or reckless disregard of the law;
 - (3) reasonable attorney's fees and other litigation costs reasonably incurred;
- and
- (4) such other preliminary and equitable relief as the court determines to be appropriate.
3. This act shall take effect immediately.

Approved January 8, 2004.

CHAPTER 207

AN ACT concerning the regulation of long-term care insurance.

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

C.17B:27E-1 Purpose of act on long-term care insurance.

1. The purpose of this act is to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

C.17B:27E-2 Application of act.

2. The requirements of this act shall apply to policies delivered or issued for delivery in this State on or after the effective date of this act intended for use as long-term care insurance. This act is not intended to supersede the obligations of entities subject to this act to comply with the substance of other applicable insurance laws insofar as they do not conflict with this act, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.

C.17B:27E-3 Short title.

3. This act shall be known and may be cited as the "New Jersey Long-Term Care Insurance Act."

C.17B:27E-4 Definitions relative to regulation of long-term care insurance.

4. As used in this act, unless the context requires otherwise:

"Applicant" means:

(1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) In the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate" means any certificate or evidence of coverage issued under a group long-term care insurance policy, which has been delivered or issued for delivery in this State.

"Commissioner" means the Commissioner of Banking and Insurance.

"Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this State and issued to:

(1) a group conforming to one of the descriptions set forth at N.J.S. 17B:27-2 through 17B:27-8 inclusive, or N.J.S. 17B:27-27; or

(2) any group not set forth in paragraph (1) of this definition, which in the opinion of the commissioner may be insured for group long-term care insurance in accordance with sound underwriting principles.

"Long-term care insurance" means any insurance policy, certificate or rider advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. The term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term shall also apply to qualified long-term care insurance contracts. Long-term care insurance may be issued by insurers; fraternal benefit societies; health, hospital, or medical service corporations; prepaid health plans; or health maintenance organizations. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more qualifying events, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the

benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this act.

"Policy" means any policy, contract, subscriber agreement, rider or endorsement providing long-term care insurance coverage delivered or issued for delivery in this State by an insurer; fraternal benefit society; health, hospital, or medical service corporation; prepaid health plan; health maintenance organization or any similar organization.

"Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance contract that meets the requirements of 26 U.S.C. s. 7702B(b), as follows:

(1) The only insurance protection provided under the contract is coverage of qualified long-term services. A contract shall not fail to satisfy the requirements of this paragraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(2) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act (42 U.S.C. s. 1395 et seq.) or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this paragraph do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act (42 U.S.C. s. 1395 et seq.) only as a secondary payor. A contract shall not fail to satisfy the requirements of this paragraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(3) The contract is guaranteed renewable, within the meaning of 26 U.S.C. s. 7702B(b)(1)(C);

(4) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in paragraph (5) of this definition;

(5) All refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract shall not exceed the aggregate premiums paid under the contract; and

(6) The contract meets the consumer protection provisions set forth in 26 U.S.C. s. 7702B(g).

"Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" also means the portion of a life insurance contract that provides long-term care insurance coverage by a rider or as part

of the contract and that satisfies the requirements of 26 U.S.C. s. 7702B(b) and (e).

C.17B:27E-5 Compliance required.

5. a. Any policy, certificate or rider advertised, marketed or offered as long-term care insurance shall comply with the provisions of this act.

b. No group long-term care insurance coverage shall be offered to a resident of this State under a group policy issued in another state to a group described in paragraph (2) of the definition of "group long-term care insurance" in section 4 of this act, unless this State, or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State, has made a determination that those requirements have been met.

C.17B:27E-6 Prohibitions relative to long-term care insurance.

6. a. No long-term care insurance policy or certificate shall:

(1) Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company or affiliated company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled nursing care in a facility than coverage for lower levels of care.

b. (1) No long-term care insurance policy or certificate shall use a definition of "preexisting condition" which is more restrictive than the following: preexisting condition means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(2) No long-term care insurance policy or certificate shall exclude coverage for a loss or confinement which is the result of a preexisting condition unless that loss or confinement begins within six months following the effective date of coverage of an insured person.

(3) The definition of "preexisting condition" shall not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not

be covered until the waiting period described in paragraph (2) of this subsection b. expires. No long-term care insurance policy or certificate shall exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph (2) of this subsection b.

(4) A preexisting condition limitation shall only apply to the long-term care insurance coverage and shall not apply to any death benefit or other life insurance benefit provided by a long-term care insurance policy or certificate.

c. (1) No long-term care insurance policy or certificate shall be delivered or issued for delivery in this State if that policy or certificate:

(a) Conditions eligibility for any benefits on a prior hospitalization requirement;

(b) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(c) Conditions eligibility for any benefits, other than waiver of premium, post-confinement, post-acute care or recuperative benefits, on a prior institutionalization requirement.

(2) (a) A long-term care insurance policy or certificate containing post-confinement, post-acute care or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" those limitations or conditions, including any required number of days of confinement.

(b) A long-term care insurance policy or certificate which conditions eligibility for non-institutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than 30 days.

d. Long-term care insurance applicants shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

e. (1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(a) The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

(b) In the case of insurance producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(2) The outline of coverage shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

(d) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) A description of the terms under which the policy or certificate may be returned and the premium refunded;

(f) A brief description of the relationship of cost of care and benefits; and

(g) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under 26 U.S.C. s. 7702B(b).

f. A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this State, shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

g. At the time of policy delivery, a policy summary as prescribed by the commissioner pursuant to subsection e. of this section shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make that delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

(1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(2) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any, for each covered person;

(3) Any exclusions, reductions and limitations on benefits of long-term care;

(4) A statement as to whether any long-term care inflation protection option is available under this policy;

(5) If applicable to the policy type, the summary shall also include:

(a) A disclosure of the effects of exercising other rights under the policy;

(b) A disclosure of guarantees related to long-term care costs of insurance charges;

(c) Current and projected maximum lifetime benefits; and

(6) The provisions of the policy summary listed above may be incorporated into a basic illustration required to be delivered in accordance with regulations promulgated by the commissioner or into the life insurance policy summary which is required to be delivered in accordance with regulations promulgated by the commissioner.

h. Whenever a long-term care benefit, funded through a life insurance policy by the acceleration of the death benefit, is in benefit payment status, a monthly report as specified by the commissioner shall be provided to the policyholder or certificate holder. The report shall include:

(1) Any long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy, such as death benefits or cash values, due to long-term care benefits being paid out; and

(3) The amount of long-term care benefits existing or remaining.

C.17B:27E-7 Grounds for rescinding policy, denying a claim.

7. a. For a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

b. For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

c. After a policy or certificate has been in force for two years, it is not contestable upon the grounds of misrepresentation alone; such a policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

d. If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments shall not be recovered by the insurer if the policy or certificate is rescinded.

e. In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by N.J.S. 17B:25-4 or 17B:27-12, as appropriate. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

C.17B:27E-8 Conditions for delivery, issuance of policy.

8. a. Except as provided in subsection b. of this section, a long-term care insurance policy shall not be delivered or issued for delivery in this State unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.

b. When a group long-term care insurance policy is issued, the offer required in subsection a. of this section shall be made to the group policyholder.

C.17B:27E-9 Regulations.

9. The commissioner shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act including, but not limited to, regulations dealing with disclosure requirements, eligibility, renewability, non-duplication of coverage, dependent coverage, preexisting conditions, termination of coverage, continuation or conversion, loss ratio, and other information that the commissioner feels necessary.

C.17B:27E-10 Prior approval of commissioner required.

10. a. Every long-term care insurance policy or contract, including any application, certificate, rider or endorsement to be issued or delivered in this State shall be filed with the commissioner for prior approval as provided in this section.

b. A policy, contract or related form filed with the commissioner for approval pursuant to this section shall be deemed approved upon the expiration of 60 days after the submission of the form unless disapproved in writing by the commissioner within that time. Any such disapproval shall be based only on the specific provisions of applicable statutes or regulations. A disapproved policy, contract or related form may be resubmitted.

c. A long-term care insurance policy, contract or related form submitted for approval pursuant to this section and disapproved by the commissioner before the expiration of 60 days after its submission shall be deemed withdrawn

at the expiration of 60 days after the transmittal of the commissioner's specific objections unless the filer submits a complete written response to all of the commissioner's objections regarding the submission within the 60-day period.

d. A long-term care insurance policy, contract or related form resubmitted in response to the commissioner's objections pursuant to subsection b. of this section shall be deemed approved upon the expiration of 30 days after its resubmission unless disapproved in writing by the commissioner within that time. No disapproval by the commissioner of a resubmission shall be based on any objection not specified by the commissioner in his initial disapproval of the filing, except that the commissioner may disapprove that form based on any new provisions introduced in the resubmission or, if in addressing the specific objections cited in the commissioner's disapproval, the insurer changes or modifies any substantive provisions of the form. Any policy, contract or related form resubmitted for approval pursuant to this section and disapproved by the commissioner before the expiration of 30 days after its submission shall be deemed withdrawn at the expiration of 30 days after the transmittal of the commissioner's specific objections, unless the filer submits a complete written response to all of the commissioner's objections regarding the submission within the 30-day period.

e. Any form which is filed with the commissioner and approved or deemed approved may be so delivered or issued for delivery until such time as any subsequent withdrawal of the filing by the commissioner, following an opportunity for a hearing held in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted thereunder, becomes final in accordance therewith.

f. For the purposes of this section, "days" means calendar days, except that when the last day of any specified time period is a Saturday, Sunday, or State holiday, then the time period shall end on the next following business day. With respect to any specified time period pertaining to correspondence between an insurer and the commissioner, the time period shall commence on the date that correspondence is postmarked or submitted to a private delivery service.

C.17B:27E-11 Insurer to file rates, rating schedule, supporting documentation.

11. An insurer providing long-term care insurance issued on an individual basis in this State shall file, for the commissioner's approval, its rates, rating schedule and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this State. All filings of rates and rating schedules shall demonstrate that the benefits are reasonable in relation to the premium charged and that the rates are not excessive, inadequate or unfairly discriminatory.

C.17B:27E-12 Additional penalties.

12. In addition to any other penalties provided by the laws of this State, any insurer and any insurance producer found to have violated any requirement of this State relating to the regulation of long-term care insurance or the marketing of that insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy or certificate involved in the violation, or \$10,000, whichever is greater.

13. This act shall take effect on the 180th day following enactment.

Approved January 8, 2004.

CHAPTER 208

AN ACT concerning unsolicited telemarketing sales calls and amending P.L.2003, c.76 (C.56:8-119 et seq.).

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

1. Section 2 of P.L.2003, c.76 (C.56:8-120) is amended to read as follows:

C.56:8-120 Definitions relative to telemarketing calls.

2. As used in this act:

"Customer" means an individual who is a resident of this State and a prospective recipient of a telemarketing sales call.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Local exchange telephone company" means a telecommunications carrier authorized by the Board of Public Utilities to provide local telecommunications services.

"Merchandise" means merchandise as defined in subsection (c) of section 1 of P.L.1960, c.39 (C.56:8-1), including an extension of credit.

"No telemarketing call list" or "no call list" means a list of telephone numbers of customers in this State who desire not to receive unsolicited telemarketing sales calls.

"Telemarketer" means any entity, whether an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, whether on behalf of itself or others, who makes

residential telemarketing sales calls to a customer when the customer is in this State or any person who directly controls or supervises the conduct of a telemarketer.

"Telemarketing" means any plan, program or campaign which is conducted by telephone to encourage the purchase or rental of, or investment in, merchandise, but does not include the solicitation of sales through media other than a telephone call.

"Telemarketing sales call" means a telephone call made by a telemarketer to a customer as part of a plan, program or campaign to encourage the purchase or rental of, or investment in, merchandise, except for continuing services. A telephone call made to an existing customer for the sole purpose of collecting on accounts or following up on contractual obligations shall not be deemed a telemarketing sales call.

"Unsolicited telemarketing sales call" means any telemarketing sales call other than a call made:

- (1) in response to an express written request of the customer called; or
- (2) to an existing customer, which shall include the ability to collect on accounts and follow up on contractual obligations, unless the customer has stated to the telemarketer that the customer no longer desires to receive the telemarketing sales calls of the telemarketer.

2. Section 9 of P.L.2003, c.76 (C.56:8-127) is amended to read as follows:

C.56:8-127 Establishment, maintenance of no telemarketing call list, use of national registry.

9. The division shall establish and maintain a no telemarketing call list and may utilize for this purpose, in any manner the director deems appropriate, the national do-not-call registry as maintained by the Federal Trade Commission. The division may contract with a private vendor to establish and maintain the no call list, provided:

a. the private vendor meets standards established by the division by regulations that require that the vendor:

- (1) is financially sound;
- (2) has the capacity to perform the service required;
- (3) has a record of past performance; and
- (4) does not have a conflict of interest with a telemarketer or an association thereof; and

b. the contract requires the vendor to provide the list in a printed hard copy format, and in any other format, as prescribed by the division.

3. Section 10 of P.L.2003, c.76 (C.56:8-128) is amended to read as follows:

C.56:8-128 Requirements relative to telemarketing sales calls.

10. a. No telemarketer shall make or cause to be made any unsolicited telemarketing sales call to any customer whose telephone number is included on the no telemarketing call list established pursuant to section 9 of this act, except for a call made within three months of the date the customer's telephone number was first included on the no call list but only if the telemarketer had at the time of the call not yet obtained a no call list which included the customer's telephone number and the no call list used by the telemarketer was issued less than three months prior to the time the call was made.

b. A telemarketer making a telemarketing sales call shall, within the first 30 seconds of the call, identify the telemarketer's name, the person on whose behalf the call is being made, and the purpose of the call.

c. A telemarketer shall not make or cause to be made any unsolicited telemarketing sales call to any customer between the hours of 9 p.m. and 8 a.m., local time, at the customer's location.

d. A telemarketer shall not intentionally use any method that blocks a caller identification service from displaying caller identification information or otherwise circumvents a customer's use of a telephone caller identification service.

4. Section 11 of P.L.2003, c.76 (C.56:8-129) is amended to read as follows:

C.56:8-129 Inclusion on list, notice to customers of existence of list, updating; directory information.

11. a. A customer who desires to be included on the no telemarketing call list shall notify the division by calling a toll-free number provided or denominated by the division, or in any other manner and at a time prescribed by the division. A customer who is included on the no call list shall be removed from the no call list upon the customer's written request. The no call list shall be updated not less than quarterly and the division shall, if the no call list is not readily accessible through other means, make the no call list available to registered telemarketers for a fee that the division shall prescribe.

b. A local exchange telephone company shall include, in every telephone directory published after the effective date of this act, notice concerning the provisions of this act as those provisions relate to the rights of customers with respect to telemarketers and the no telemarketing call list. A local exchange telephone company shall also enclose, at least semiannually, in every telephone bill, a notice concerning the provisions of this act as those provisions relate to the rights of customers with respect to telemarketers and the no telemarketing call list.

5. Section 16 of P.L.2003, c.76 (C.56:8-134) is amended to read as follows:

C.56:8-134 Rules, regulations.

16. The division, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations necessary to implement this act, which shall include, but not be limited to:

- a. provisions governing the availability and distribution of the no call list established pursuant to section 9 of this act;
- b. any other matters relating to the no call list established pursuant to section 9 of this act that the division deems necessary; and
- c. such procedures as may be most effective to ensure that the no call list is up-to-date and accurately reflects the telephone numbers of persons wishing to be on the no call list and procedures to identify telephone numbers that have been reallocated to persons other than those who have indicated that they wish to be on the no call list. Such procedures may include, but not be limited to, establishing a means of matching the no call list with the names and numbers of persons with current listings supplied by the local exchange telephone companies, or establishing a requirement for re-enrollment to the list from time to time.

6. This act shall take effect immediately.

Approved January 8, 2004.

CHAPTER 209

AN ACT concerning ordinances, resolutions and homeowners' association rules regulating the public display of the American flag, yellow ribbons and signs supporting United States troops and supplementing Title 40 of the Revised Statutes and P.L.1993, c.30 (C.45:22A-43 et seq.).

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

C.40:48-2.58 Municipality prohibited from limiting, prohibiting display of U.S. flag, yellow ribbons, signs in support of troops.

1. a. The governing body of a municipality shall not adopt or enforce any ordinance or resolution, as appropriate, limiting or prohibiting the display of the flag of the United States of America or yellow ribbons and signs supporting United States troops, nor shall any bond or permit fee be required of a person or organization for displaying the flag or yellow ribbons and signs

supporting United States troops, except as provided for in subsection b. of this section.

b. A municipality may direct removal of an American flag or yellow ribbons and signs supporting United State troops when it is exhibited in a manner that threatens public safety, restricts necessary maintenance activities, interferes with the property rights of another, or the flag is displayed in a manner inconsistent with the rules and customs deemed the proper manner to display the flag, such as the federal flag Code, 4 U.S.C. s.1 et seq., or any other applicable law or guideline.

c. Any ordinance or resolution adopted by the governing body of a municipality in violation of subsection a. of this section shall be null and void.

C.45:22A-48.1 Homeowners' association prohibited from limiting, prohibiting display of U.S. flag, yellow ribbons, signs in support of troops.

2. a. A homeowners' association formed to manage the elements of property owned in common by all members of a community, whether it be an association managing a condominium, a private community, including retirement communities, or a cooperative housing development, shall not adopt or enforce a rule or bylaw limiting or prohibiting the display of the flag of the United States of America or yellow ribbons and signs supporting United States troops, or charge a fee for any such display, except as provided in subsection b. of this section. Any such rule or bylaw adopted by a homeowners' association in violation of this section shall be null and void.

b. A homeowners' association may direct removal of an American flag or yellow ribbons and signs supporting United States troops when the display threatens public safety, restricts necessary maintenance activities, interferes with the property rights of another, or is conducted in a manner inconsistent with the rules and customs deemed the proper manner to display the flag, such as the federal flag Code, 4 U.S.C. s.1 et seq., or any other applicable law or guideline.

3. This act shall take effect immediately.

Approved January 8, 2004.

CHAPTER 210

AN ACT concerning property abandonment, amending P.L.1942, c.112, R.S.54:5-86, and amending and supplementing P.L.1996, c.62 (C.55:19-20 et al.).

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

C.55:19-78 Short title.

1. This act shall be known and may be cited as the "Abandoned Properties Rehabilitation Act."

C.55:19-79 Findings, declarations relative to abandoned properties.

2. The Legislature finds and declares that:

a. Abandoned properties, particularly those located within urban areas or in close proximity to occupied residences and businesses, create a wide range of problems for the communities in which they are located, fostering criminal activity, creating public health problems and otherwise diminishing the quality of life for residents and business operators in those areas.

b. Abandoned properties diminish the property values of neighboring properties and have a negative effect on the quality of life of adjacent property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization.

c. For these reasons, abandoned properties are presumptively considered to be nuisances, in view of their negative effects on nearby properties and the residents or users of those properties.

d. The continued presence of abandoned properties in New Jersey's communities acts as a significant barrier to urban revitalization and to the regeneration of the State's urban centers.

e. Abandonment is a local problem that must be addressed locally and the most important role of State government is to provide local governments, local community organizations, citizens, and residents with the tools to address the problem.

f. The responsibility of a property owner to maintain a property in sound condition and prevent it from becoming a nuisance to others extends to properties which are not in use and 'demolition by neglect', leading to the deterioration and loss of the property, or failure by an owner to comply with legitimate orders to demolish, stabilize or otherwise repair his or her property creates a presumption that the owner has abandoned the property.

g. Many abandoned buildings still have potential value for residential and other uses and such buildings should be preserved rather than demolished, wherever feasible, particularly buildings that have historic or architectural value, or contribute to maintaining the character of neighborhoods or streetscapes, or both, as the case may be.

C.55:19-80 Definitions relative to abandoned property.

3. As used in sections 1 through 25 of P.L.2003, c.210 (C.55:19-78 through C.55:17-102):

"Department" means the New Jersey Department of Community Affairs.

"Lienholder" or "mortgage holder" means any person or entity holding a note, mortgage or other interest secured by the building or any part thereof.

"Municipality" means any city, borough, town, township or village situated within the boundaries of this State and shall include a qualified rehabilitation entity that may be designated by the municipality pursuant to section 13 of P.L.2003, c.210 (C.55:19-90) to act as its agent to exercise any of the municipality's rights pursuant thereto.

"Owner" means the holder or holders of title to an abandoned property.

"Property" means any building or structure and the land appurtenant thereto.

"Public officer" means the person designated by the municipality pursuant to section 3 of P.L.1942, c.112 (C.40:48-2.5).

"Qualified rehabilitation entity" means an entity organized or authorized to do business under the New Jersey statutes which shall have as one of its purposes the construction or rehabilitation of residential or non-residential buildings, the provision of affordable housing, the restoration of abandoned property, the revitalization and improvement of urban neighborhoods, or similar purpose, and which shall be well qualified by virtue of its staff, professional consultants, financial resources, and prior activities set forth in P.L.2003, c.210 (C.55:19-78 et al.) to carry out the rehabilitation of vacant buildings in urban areas.

C.55:19-81 Determination that property is abandoned.

4. Except as provided in section 6 of P.L.2003, c.210 (C.55:19-83), any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the public officer that:

a. The property is in need of rehabilitation in the reasonable judgment of the public officer, and no rehabilitation has taken place during that six-month period;

b. Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six months as of the date of a determination by the public officer pursuant to this section;

c. At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of Title 54 of the Revised Statutes as of the date of a determination by the public officer pursuant to this section; or

d. The property has been determined to be a nuisance by the public officer in accordance with section 5 of P.L.2003, c.210 (C.55:19-82).

C.55:19-82 Determination of property as nuisance.

5. A property may be determined to be a nuisance if:

- a. The property has been found to be unfit for human habitation, occupancy or use pursuant to section 1 of P.L.1942, c.112 (C.40:48-2.3);
- b. The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties;
- c. The property is subject to unauthorized entry leading to potential health and safety hazards; the owner has failed to take reasonable and necessary measures to secure the property; or the municipality has secured the property in order to prevent such hazards after the owner has failed to do so;
- d. The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards; or
- e. The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable and necessary measures to remedy the conditions.

A public officer who determines a property to be a nuisance pursuant to subsections b. through e. of this section shall follow the notification procedures set forth in P.L.1942, c.112 (C.40:48-2.3 et seq.).

C.55:19-83 Property not deemed abandoned, conditions.

6. a. If an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate on an unoccupied property, that property shall not be deemed to be abandoned if (1) the owner of the certificate has continued to pay all municipal taxes and liens on the property in the tax year when due; and (2) the owner of the certificate takes action to initiate foreclosure proceedings within six months after the property is eligible for foreclosure.

b. A property which is used on a seasonal basis shall be deemed to be abandoned only if the property meets any two of the additional criteria set forth in section 4 of P.L.2003, c.210 (C.55:19-81).

c. A determination that a property is abandoned property under the provisions of P.L.2003, c.210 (C.55:19-78 et al.) shall not constitute a finding that the use of the property has been abandoned for purposes of municipal zoning or land use regulation.

C.55:19-84 Action to transfer property to municipality.

7. A summary action or otherwise to transfer possession and control of abandoned property in need of rehabilitation to a municipality may be brought by a municipality in the Superior Court in the county in which the property is situated. If the court shall find that the property is abandoned pursuant to section 4 of P.L.2003, c.210 (C.55:19-81) and the owner or party in interest has failed to submit and initiate a rehabilitation plan, then the court may

authorize the municipality to take possession and control of the property and develop a rehabilitation plan.

The municipality granted possession and control may commence and maintain those further proceedings for the conservation, protection or disposal of the property or any part thereof that are required to rehabilitate the property, necessary to recoup the cost and expenses of rehabilitation and for the sale of the property; provided, however, that the court shall not direct the sale of the property if the owner applies to the court for reinstatement of control of the property as provided in section 15 of P.L.2003, c.210 (C.55:19-92).

Failure by the owner, mortgage holder or lien holder to submit plans for rehabilitation to the municipality, obtain appropriate construction permits for rehabilitation or, in the alternative, submit formal applications for funding the cost of rehabilitation to local, State or federal agencies providing such funding within that six-month period shall be deemed prima facie evidence that the owner has failed to take any action to further the rehabilitation of the property.

C.55:19-85 Complaint, content.

8. A complaint filed pursuant to section 7 of P.L.2003, c.210 (C.55:19-84) shall include:

- a. documentation that the property is on the municipal abandoned property list or a certification by the public officer that the property is abandoned; and
- b. a statement by an individual holding appropriate professional qualifications that there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character of the building or the relationship of the building to other buildings and lands within its immediate vicinity.

C.55:19-86 Complaint, lis pendens, notice.

9. a. Within 10 days of filing a complaint pursuant to P.L.2003, c.210 (C.55:19-78 et al.), the plaintiff shall file a notice of lis pendens with the county recording officer of the county within which the building is located.

b. At least 30 days before filing the complaint, the municipality shall serve a notice of intention to take possession of an abandoned building. The notice shall inform the owner and interested parties that the property has not been legally occupied for six months and of those criteria that led to a determination of abandonment pursuant to section 4 of P.L.2003, c.210 (C.55:19-81).

The notice shall provide that unless the owner or a party in interest prepares and submits a rehabilitation plan to the appropriate municipal officials, the municipality will seek to gain possession of the building to rehabilitate the property and the associated cost shall be a lien against the property, which may be satisfied by the sale of the property, unless the owner applies to the

court for reinstatement of control of the property as provided in section 15 of P.L.2003, c.210 (C.55:19-92).

After the complaint is filed, the complaint shall be served on the parties in interest in accordance with the New Jersey Rules of Court.

C.55:19-87 Defense by owner against complaint.

10. a. Any owner may defend against a complaint filed pursuant to section 7 of P.L.2003, c.210 (C.55:19-84) by submitting a plan for the rehabilitation and reuse of the property which is the subject of the complaint and by posting a bond equal to 125 percent of the amount determined by the public officer or the court to be the projected cost of rehabilitation.

b. A plan submitted by an owner pursuant to this section shall include, but not be limited to:

(1) A detailed financial feasibility analysis, including documentation of the economic feasibility of the proposed reuse, including operating budgets or resale prices, or both, as appropriate;

(2) A budget for the rehabilitation of the property, including sources and uses of funds, based on the terms and conditions of realistically available financing, including grants and loans;

(3) A timetable for the completion of rehabilitation and reuse of the property, including milestones for performance of major steps leading to and encompassing the rehabilitation and reuse of the property; and

(4) Documentation of the qualifications of the individuals and firms that will be engaged to carry out the planning, design, financial packaging, construction, and marketing or rental of the property.

c. (1) The court shall approve any plan that, in the judgment of the court, is realistic and likely to result in the expeditious rehabilitation and reuse of the property which is the subject of the complaint.

(2) If the court approves the owner's plan, then it may appoint the public officer to act as monitor of the owner's compliance. If the owner fails to carry out any step in the approved plan, then the municipality may apply to the court to have the owner's bond forfeited, possession of the building transferred to the municipality to complete the rehabilitation plan and authorization to use the bond proceeds for rehabilitation of the property.

(3) The owner shall provide quarterly reports to the municipality on its activities and progress toward rehabilitation and reuse of the property. The owner shall provide those reports to the court on its activities that the court determines are necessary.

d. The court may reject a plan and bond if it finds that the plan does not represent a realistic and expeditious means of ensuring the rehabilitation of the property or that the owner or his representatives or agents, or both, lack

the qualifications, background or other criteria necessary to ensure that the plan will be carried out successfully.

C.55:19-88 Designation of possessor if owner unsuccessful in defending against complaint.

11. a. If an owner is unsuccessful in defending against a complaint filed pursuant to section 7 of P.L.2003, c.210 (C.55:19-84), the mortgage holder or lien holder may seek to be designated in possession of the property by submitting a plan and posting a bond meeting the same conditions as set forth in section 10 of P.L.2003, c.210 (C.55:19-87). If the court approves any such mortgage holder or lien holder's plan, it shall designate that party to be in possession of the property for purposes of ensuring its rehabilitation and reuse and may appoint the public officer to act as monitor of the party's compliance.

The mortgage holder or lien holder, as the case may be, shall provide quarterly reports to the court and the municipality on its activities and progress toward rehabilitation and reuse of the property.

If the mortgage holder or lien holder fails to carry out any material step in the approved plan, then the public officer shall notify the court, which may order the bond forfeit, grant the municipality possession of the property, and authorize the municipality to use the proceeds of the bond for rehabilitation of the property.

b. Any sums incurred or advanced for the purpose of rehabilitating the property by a mortgage holder or lien holder granted possession of a property pursuant to subsection a. of this section, including court costs and reasonable attorney's fees, may be added to the unpaid balance due that mortgage holder or lien holder, with interest calculated at the same rate set forth in the note or security agreement; or, in the case of a tax lien holder, at the statutory interest rate for subsequent liens.

C.55:19-89 Submission of plan to court by municipality.

12. If no mortgage holder or lienholder meets the conditions of section 11 of P.L.2003, c.210 (C.55:19-88), then the municipality shall submit a plan to the court which conforms with the provisions of subsection b. of section 10 of P.L.2003, c.210 (C.55:19-87). The plan shall designate the entity which shall implement the plan, which may be the municipality or that entity designated in accordance with the provisions of section 13 of P.L.2003, c.210 (C.55:19-90).

The court shall grant the municipality possession of the property if it finds that:

- a. the proposed rehabilitation and reuse of the property is appropriate and beneficial;
- b. the municipality is qualified to undertake the rehabilitation and reuse of the property; and

c. the plan submitted by the municipality represents a realistic and timely plan for the rehabilitation and reuse of the property.

The municipality shall take all steps necessary and appropriate to further the rehabilitation and reuse of the property consistent with the plan submitted to the court. In making its findings pursuant to this section, the court may consult with qualified parties, including the Department of Community Affairs, and, upon request by a party in interest, may hold a hearing on the plan.

Where either a redevelopment plan pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) or a neighborhood revitalization plan pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.) has been adopted or approved by the Department of Community Affairs, as appropriate, encompassing the property which is the subject of a complaint, the court shall make a further finding that the proposed rehabilitation and reuse of the property are not inconsistent with any provision of either plan.

C.55:19-90 Municipality, option of designating qualified rehabilitation entity.

13. A municipality may exercise its rights under P.L.2003, c.210 (C.55:19-78 et al.) directly, or may designate a qualified rehabilitation entity to act as its designee for the purpose of exercising the municipality's rights where that designation will further the rehabilitation and reuse of the property consistent with municipal plans and objectives. This designation shall be made by resolution of the municipal governing body, except that in municipalities organized under the "mayor-council plan" of the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), it shall be made by the mayor. The governing body or mayor, as the case may be, may delegate this authority to the public officer.

Regardless of whether a municipality exercises its rights directly or designates a qualified rehabilitation entity pursuant to this section, while in possession of a property pursuant to P.L.2003, c.210 (C.55:19-78 et al.), a municipality shall maintain, safeguard, and maintain insurance on the property. Notwithstanding the municipality's possession of the property, nothing in P.L.2003, c.210 (C.55:19-78 et al.) shall be deemed to relieve the owner of the property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.

C.55:19-91 Municipality deemed to have ownership interest:

14. a. If a municipality has been granted possession of a property pursuant to section 12 of P.L.2003, c.210 (C.55:19-89), that municipality shall be deemed to have an ownership interest in the property for the purpose of filing plans with public agencies and boards, seeking and obtaining construction permits and other approvals, and submitting applications for financing or other assistance to public or private entities.

For the purposes of any State program of grants or loans, including but not limited to programs of the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency, possession of a property under this section shall be considered legal control of the property.

Notwithstanding the granting of possession to a municipality, nothing in P.L.2003, c.210 (C.55:19-78 et al.) shall be deemed to relieve the owner of the property of any obligation the owner or any other person may have for the payment of taxes or other municipal liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the granting of possession.

The granting of possession shall not suspend any obligation the owner may have as of the date of the granting of possession for payment of any operating or maintenance expense associated with the property, whether or not billed at the time of the granting of possession.

b. The court may approve the borrowing of funds by a municipality to rehabilitate the property and may grant a lien or security interest with priority over all other liens or mortgages other than municipal liens. Prior to granting this lien priority, the court shall find that (1) the municipality sought to obtain the necessary financing from the senior lienholder, which declined to provide such financing on reasonable terms; (2) the municipality sought to obtain a voluntary subordination from the senior lienholder, which refused to provide such subordination; and (3) lien priority is necessary in order to induce another lender to provide financing on reasonable terms.

No lien authorized by the court shall take effect unless recorded in the office of the clerk of the county in which the property is located. For the purposes of this section, the cost of rehabilitation shall include reasonable non-construction costs such as architectural fees or construction permit fees customarily included in the financing of the rehabilitation of residential property.

c. Where the municipality has been granted possession by the court in the name of the municipality, the municipality may seek the approval of the court to assign its rights to another entity, which approval shall be granted by the court when it finds that: (1) the entity to which the municipality's rights will be assigned is a qualified rehabilitation entity; and (2) the assignment will further the purposes of this section.

d. Where a municipality has designated a qualified rehabilitation entity to act on its behalf, the qualified rehabilitation entity shall provide quarterly reports to the municipality on its activities and progress toward rehabilitation and reuse of the property. The municipality or qualified rehabilitation entity, as the case may be, shall provide such reports to the court as the court determines to be necessary. If the court finds that the municipality or its designee have failed to take diligent action toward rehabilitation of the property

within one year from the grant of possession, then the court may request the municipality to designate another qualified rehabilitation entity to exercise its rights, or if the municipality fails to do so, may terminate the order of possession and return the property to its owner.

e. The municipality shall file a Notice of Completion with the court, and shall also serve a copy on the owner and any mortgage holder or lien holder, at such time as the municipality has determined that no more than six months remain to the anticipated date on which rehabilitation will be complete. This notice shall include an affidavit of the public officer attesting that rehabilitation can realistically be anticipated to be complete within that time period, and a statement setting forth such actions as it plans to undertake to ensure that reuse of the property takes place consistent with the plan.

C.55:19-92 Petition for reinstatement of owner's control, possession.

15. An owner may petition for reinstatement of the owner's control and possession of the property at any time after one year from the grant of possession, but no later than 30 days after the municipality has filed a Notice of Completion with the court or, in the event the Notice of Completion is filed within less than one year of the grant of possession, within 30 days after the municipality has filed notice.

The court may allow additional time for good cause if that additional time does not materially delay completion of the rehabilitation, place undue hardship on the municipality, or affect any of the terms or conditions under which the municipality has applied for or received financing for the rehabilitation of the property.

C.55:19-93 Contents of petition.

16. Any petition for reinstatement of the owner's control and possession of the property filed pursuant to section 15 of P.L.2003, c.210 (C.55:19-92) shall:

- a. include a plan for completion of the rehabilitation and reuse of the property consistent with the plan previously approved by the court;
- b. provide legally binding assurances that the owner will comply with all conditions of any grant or loan secured by the municipality or repay those grants or loans in full, at the discretion of the maker of the loan or grant; and
- c. be accompanied by payment equal to the sum of (1) all municipal liens outstanding on the property; (2) all costs incurred by the municipality in bringing action with respect to the property; (3) any costs incurred by the municipality not covered by grants or loans to be assumed or repaid pursuant to this section; and (4) any costs remaining to complete rehabilitation and reuse of the property, as determined by the public officer, which payment shall be placed in escrow with the Clerk of the Court pending disposition of the petition.

C.55:19-94 Security obligations of owner relative to granting of petition.

17. Prior to the granting of a petition on the part of the owner by the court pursuant to section 15 of P.L.2003, c.210 (C.55:19-92), the owner may be required to post a bond or other security in an amount determined by the court, after consultation with the public officer, as likely to ensure that the owner will continue to maintain the property in sound condition. That bond or other security shall be made available to the municipality to make any repair on the property in the event of a code violation which is not corrected in timely fashion by the owner. The bond or other security may be forfeit in full in the event that the owner fails to comply with any requirement imposed as a condition of the reinstatement petition filed pursuant to section 15 of P.L.2003, c.210 (C.55:19-92).

The owner may seek approval of the court to be relieved of this requirement after five years, which shall be granted if the court finds that the owner has maintained the property in good repair during that period, that no material violations affecting the health and safety of the tenants have occurred during that period, and that the owner has remedied other violations in a timely and expeditious fashion.

C.55:19-95 Granting of title to municipality, authorization to sell.

18. If the owner fails to petition for the reinstatement of control and possession of the property within 30 days after the entity in possession has filed a Notice of Completion or in any event within two years after the initial grant of possession, or if the owner fails to meet any conditions that may be set by the court in granting a reinstatement petition filed pursuant to section 15 of P.L.2003, c.210 (C.55:19-92), upon petition from the entity in possession, the court may grant the municipality title or authorize the municipality to sell the property, subject to the provisions of section 19 of P.L.2003, c.210 (C.55:19-96).

C.55:19-96 Procedure for municipality to purchase, sell property.

19. a. Where the municipality seeks to gain title to the property, it shall purchase the property for fair market value on such terms as the court shall approve, and may place the proceeds of sale in escrow with the court.

The court may authorize the municipality to sell the building free and clear of liens, claims and encumbrances, in which event all such liens, claims and encumbrances shall be transferred to the proceeds of sale with the same priority as existed prior to resale in accordance with the provisions of this section, except that municipal liens shall be paid at settlement.

The proceeds of the purchase of the property shall be distributed as set forth in section 20 of P.L.2003, c.210 (C.55:19-97).

b. The municipality may seek approval of the court to sell the property to a third party when the court finds that such conveyance will further the effective and timely rehabilitation and reuse of the property.

c. Upon approval by the court the municipality shall sell the property on such terms and at such price as the court shall approve, and may place the proceeds of sale in escrow with the court. The court shall order a distribution of the proceeds of sale after paying court costs in the order of priority set forth in section 20 of P.L.2003, c.210 (C.55:19-97).

C.55:19-97 Distribution of proceeds.

20. The proceeds paid pursuant to subsection c. of section 19 of P.L.2003, c.210 (C.55:19-96) shall be distributed in the following order of priority:

- a. The costs and expenses of sale;
 - b. Other governmental liens;
 - c. Repayment of principal and interest on any borrowing or indebtedness incurred by the municipality and granted priority lien status pursuant to subsection a. of section 21 of P.L.2003, c.210 (C.55:19-98);
 - d. A reasonable development fee to the municipality consistent with the standards for development fees established for rehabilitation programs by the New Jersey Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
 - e. Other valid liens and security interests, in accordance with their priority;
- and
- f. The owner.

C.55:19-98 Lien, special tax sales, remedies.

21. a. The public officer, with the approval of the court, may place a lien on the property to cover any costs of the municipality in connection with a proceeding under P.L.2003, c.210 (C.55:19-78 et al.) incurred prior to the grant by the court of an order of possession under P.L.2003, c.210 (C.55:19-78 et al.), which may include costs incurred to stabilize or secure the property to ensure that it can be rehabilitated in a cost-effective manner. Any such lien shall be considered a municipal lien for the purposes of R.S.54:5-9 with the rights and status of a municipal lien pursuant thereto.

b. With the exception of the holding of special tax sales pursuant to section 24 of P.L.2003, c.210 (C.55:19-101), the remedies available under P.L.2003, c.210 (C.55:19-78 et al.) shall be available to any municipality with respect to any abandoned property, whether or not the municipality has established an abandoned property list as provided in section 36 of P.L.1996, c.62 (C.55:19-55) and whether or not the property has been included on any such list.

C.55:19-99 Denial of rights, remedies to lienholder, mortgage holder.

22. Notwithstanding any provision to the contrary in P.L.2003, c.210 (C.55:19-78 et al.), a court may in its discretion deny a lienholder or mortgage holder of any or all rights or remedies afforded lienholders and mortgage holders under P.L.2003, c.210 (C.55:19-78 et al.), if the court finds that the owner of a property subject to any of the provisions of P.L.2003, c.210 (C.55:19-78 et al.) owns or controls more than a 50% interest in, or effective control of, the lienholder or mortgage holder or that the familial or business relationship between the lienholder or mortgage holder and the owner precludes a separate interest on the part of the lienholder or mortgage holder.

C.55:19-100 Municipal recourse with respect to lien.

23. With respect to any lien placed against any real property pursuant to the provisions of section 1 or section 3 of P.L.1942, c.112 (C.40:48-2.3 or C.40:48-2.5) or section 1 of P.L.1989, c.91 (C.40:48-2.3a), the municipality shall have recourse with respect to the lien against any asset of the owner of the property if an individual, against any asset of any partner if a partnership, and against any asset of any owner of a 10% interest or greater if a corporation.

C.55:19-101 Special tax sales.

24. Municipalities may hold special tax sales with respect to those properties eligible for tax sale pursuant to R.S.54:5-19 which are also on an abandoned property list established by the municipality pursuant to section 36 of P.L.1996, c.62 (C.55:19-55). Municipalities electing to hold a special tax sale shall conduct that sale subject to the following provisions:

a. The municipality shall establish criteria for eligibility to bid on properties at the sale, which may include, but shall not be limited to: documentation of the bidder's ability to rehabilitate or otherwise reuse the property consistent with municipal plans and regulations; commitments by the bidder to rehabilitate or otherwise reuse the property, consistent with municipal plans and regulations; commitments by the bidder to take action to foreclose on the tax lien by a date certain; and such other criteria as the municipality may determine are necessary to ensure that the properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest;

b. The municipality may establish minimum bid requirements consistent with the provisions of subsection b. of section 1 of P.L.1941, c.232 (C.54:5-114.1) for a special tax sale that may be less than the full amount of the taxes, interest and penalties due, the amount of such minimum bid to be at the sole discretion of the municipality, in order to ensure that the properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest;

c. The municipality may combine properties into bid packages, and require that bidders place a single bid on each package, and reject any and all bids on individual properties that have been included in bid packages;

d. The municipality may sell properties subject to provisions that, if the purchaser fails to carry out any commitment that has been set forth as a condition of sale pursuant to subsection a. of this section or misrepresents any material qualification that has been established as a condition of eligibility to bid pursuant thereto, then the properties and any interest thereto acquired by the purchaser shall revert to the municipality, and any amount paid by the purchaser to the municipality at the special tax sale shall be forfeit to the municipality;

e. In the event there are two or more qualified bidders for any property or bid package in a special tax sale, the municipality may designate the unsuccessful but qualified bidder whose bid was closest to the successful bid as an eligible purchaser;

f. In the event that the purchaser of that property or bid package fails to meet any of the conditions of sale established by the municipality pursuant to this section, and their interest in the property or properties reverts to the municipality, the municipality may subsequently designate the entity previously designated as an eligible purchaser as the winning bidder for the property or properties, and assign the tax sale certificates to that entity on the basis of that entity's bid at the special tax sale, subject to the terms and conditions of the special tax sale.

C.55:19-102 Establishment of fair market value of property.

25. With respect to any eminent domain proceeding carried out under section 37 of P.L. 1996, c.62 (C.55:19-56), the fair market value of the property shall be established on the basis of an analysis which determines independently:

a. the cost to rehabilitate and reuse the property for such purpose as is appropriate under existing planning and zoning regulations governing its reuse or to demolish the existing property and construct a new building on the site, including all costs ancillary to rehabilitation such as, but not limited to, marketing and legal costs;

b. the realistic market value of the reused property after rehabilitation or new construction, taking into account the market conditions particular to the neighborhood or subarea of the municipality in which the property is located; and

c. the extent to which the cost exceeds or does not exceed the market value after rehabilitation, or demolition and new construction, and the extent to which any "as is" value of the property prior to rehabilitation can be added to the cost of rehabilitation or demolition and new construction without the resulting combined cost exceeding the market value as separately determined.

If the appraisal finds that the cost of rehabilitation or demolition and new construction, as appropriate, exceeds the realistic market value after rehabilitation or demolition and new construction, there shall be a rebuttable presumption in all proceedings under this subsection that the fair market value of the abandoned property is zero, and that no compensation is due the owner.

26. Section 2 of P.L.1942, c.112 (C.40:48-2.4) is amended to read as follows:

C.40:48-2.4 Terms defined.

2. The following terms whenever used or referred to in this act shall have the following respective meanings for the purposes of this act, unless a different meaning clearly appears from the context:

(a) "Governing body" shall mean the council, board of commissioners, trustees, committee, or other legislative body, charged with governing a municipality; provided, that in cities of the second class having a board of fire and police commissioners, the governing body shall mean such board of fire and police commissioners.

(b) "Public officer" shall mean the officer, officers, board or body who is or are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinances and by P.L.1942, c.112 (C.40:48-2.3 et seq.). Notwithstanding any other provision of law to the contrary, nothing shall prevent a municipality from designating more than one public officer for different purposes as provided by law.

(c) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or State relating to health, fire, building regulations, or to other activities concerning buildings in the municipality.

(d) "Owner" shall mean the holder or holders of the title in fee simple.

(e) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a building and any who are in actual possession thereof.

(f) "Building" shall mean any building, or structure, or part thereof, whether used for human habitation or otherwise, and includes any outhouses, and appurtenances belonging thereto or usually enjoyed therewith.

(g) "Authority" shall mean the Casino Reinvestment Development Authority established pursuant to section 5 of P.L.1984, c.218 (C.5:12-153).

(h) "Casino licensee" shall mean any casino licensed pursuant to the provisions of the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.).

27. Section 35 of P.L.1996, c.62 (C.55:19-54) is amended to read as follows:

C.55:19-54 Definitions relative to abandoned property.

35. For the purposes of this article:

"Abandoned property" means any property that is determined to be abandoned pursuant to P.L.2003, c.210 (C.55:19-78 et al.);

"Public officer" means a person designated or appointed by the municipal governing body pursuant to section 3 of P.L.1942, c.112 (C.40:48-2.5).

28. Section 36 of P.L.1996, c.62 (C.55:19-55) is amended to read as follows:

C.55:19-55 Identification of abandoned property, listing.

36. a. A qualified municipality that has designated or appointed a public officer pursuant to section 3 of P.L.1942, c.112 (C.40:48-2.5), may adopt an ordinance directing the public officer to identify abandoned property for the purpose of establishing an abandoned property list throughout the municipality, or within those parts of the municipality as the governing body may designate by resolution. Each item of abandoned property so identified shall include the tax block and lot number, the name of the owner of record, if known, and the street address of the lot.

b. In those municipalities in which abandoned properties have been identified in accordance with subsection a. of this section, the public officer shall establish and maintain a list of abandoned property, to be known as the "abandoned property list." The municipality may add properties to the abandoned property list at any time, and may delete properties at any time when the public officer finds that the property no longer meets the definition of an abandoned property. An interested party may request that a property be included on the abandoned property list following that procedure set forth in section 31 of P.L.2003, c.210 (C.55:19-105).

An abandoned property shall not be included on the abandoned property list if rehabilitation is being performed in a timely manner, as evidenced by building permits issued and diligent pursuit of rehabilitation work authorized by those permits. A property on which an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate which has been placed on the abandoned property list may be removed in accordance with the provisions of section 29 of P.L.2003, c.210 (C.55:19-103).

c. The Department of Community Affairs in conjunction with the Department of Environmental Protection shall prepare an information bulletin for distribution to every municipality describing the authority of a municipality under existing statutes and regulations to repair, demolish or otherwise deal with abandoned property.

d. (1) The public officer, within 10 days of the establishment of the abandoned property list, or any additions thereto, shall send a notice, by certified mail, return receipt requested, and by regular mail, to the owner of record of every property included on the list and shall cause the list to be published in the official newspaper of the municipality, which publication shall constitute public notice. The published and mailed notices shall identify property determined to be abandoned setting forth the owner of record, if known, the tax lot and block number and street address. The public officer, in consultation with the tax collector, shall also send out a notice by regular mail to any mortgagee, servicing organization, or property tax processing organization that receives a duplicate copy of the tax bill pursuant to subsection d. of R.S.54:4-64. When the owner of record is not known for a particular property and cannot be ascertained by the exercise of reasonable diligence by the tax collector, notice shall not be mailed but instead shall be posted on the property in the manner as provided in section 5 of P.L.1942, c.112 (C.40:48-2.7). The mailed notice shall indicate the factual basis for the public officer's finding that the property is abandoned property as that term is defined in section 35 of P.L.1996, c.62 (C.55:19-54) and the rules and regulations promulgated thereunder, specifying the information relied upon in making such finding. In all cases a copy of the mailed or posted notice shall also be filed by the public officer in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county wherein the property is situate. This filing shall have the same force and effect as a notice of lis pendens under N.J.S.2A:15-6. The notice shall be indexed by the name of the property owner as defendant and the name of the municipality as plaintiff, as though an action had been commenced by the municipality against the owner.

(2) The authority or its subsidiaries, as appropriate, may reimburse the municipality for the postage costs and search fees associated with providing notice in accordance with paragraph (1) of this subsection in accordance with procedures and rules promulgated by the Department of Community Affairs.

e. An owner or lienholder may challenge the inclusion of his property on the abandoned property list determined pursuant to subsection b. of this section by appealing that determination to the public officer within 30 days of the owner's receipt of the certified notice or 40 days from the date upon which the notice was sent. An owner whose identity was not known to the public officer shall have 40 days from the date upon which notice was published or posted, whichever is later, to challenge the inclusion of a property on the abandoned property list. For good cause shown, the public officer shall accept a late filing of an appeal. Within 30 days of receipt of a request for an appeal of the findings contained in the notice pursuant to subsection d. of this section, the public officer shall schedule a hearing for redetermination of the matter. Any property included on the list shall be presumed to be abandoned property

unless the owner, through the submission of an affidavit or certification by the property owner averring that the property is not abandoned and stating the reasons for such averment, can demonstrate that the property was erroneously included on the list. The affidavit or certification shall be accompanied by supporting documentation, such as but not limited to photographs, repair invoices, bills and construction contracts. The sole ground for appeal shall be that the property in question is not abandoned property as that term is defined in section 35 of P.L.1996, c.62 (C.55:19-54). The public officer shall decide any timely filed appeal within 10 days of the hearing on the appeal and shall promptly, by certified mail, return receipt requested, and by regular mail, notify the property owner of the decision and the reasons therefor.

f. The property owner may challenge an adverse determination of an appeal with the public officer pursuant to subsection e. of this section, by instituting, in accordance with the New Jersey Court Rules, a summary proceeding in the Superior Court, Law Division, sitting in the county in which the property is located, which action shall be tried de novo. Such action shall be instituted within 20 days of the date of the notice of decision mailed by the public officer pursuant to subsection e. of this section. The sole ground for appeal shall be that the property in question is not abandoned property as that term is defined in section 35 of P.L.1996, c.62 (C.55:19-54). The failure to institute an action of appeal on a timely basis shall constitute a jurisdictional bar to challenging the adverse determination, except that, for good cause shown, the court may extend the deadline for instituting the action.

g. The public officer shall promptly remove any property from the abandoned property list that has been determined not to be abandoned on appeal.

h. The abandoned property list shall become effective, and the municipality shall have the right to pursue any legal remedy with respect to properties on the abandoned property list at such time as any one property has been placed on the list in accordance with the provisions of this section, upon the expiration of the period for appeal with respect to that property or upon the denial of an appeal brought by the property owner.

C.55:19-103 Removal from abandoned property list; conditions.

29. If a property, which an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate, is placed on the abandoned property list, the property shall be removed from the list if the owner of the certificate pays all municipal taxes and liens due on the property within 30 days after the property is placed on the list; provided, however, that if the owner of the certificate fails to initiate foreclosure proceedings within six months after the property was first placed on the list, the property shall be restored to the abandoned property list.

C.55:19-104 Creation of abandoned property list; initiative procedure.

30. The voters of any municipality which has not adopted an ordinance directing the public officer to create an abandoned property list pursuant to section 36 of P.L.1996, c.62 (C.55:19-55) within one year after the effective date of P.L.2003, c.210 (C.55:19-78 et al.) may propose an ordinance directing the public officer to identify abandoned property for the purpose of establishing an abandoned property list in accordance with the provisions of section 36 of P.L.1996, c.62 and submit it to the municipal council by a petition signed by a number of the legal voters of the municipality equal in number to five percent of the total votes cast in the last election at which municipal officials were elected, but in no event fewer than 100 legal voters in a municipality with a population of 1,000 persons or more. This power of initiative shall be subject to the restrictions and procedures set forth in Article F. of P.L.1950, c.210 (C.40:69A-184 et seq.).

C.55:19-105 Request for inclusion of property on abandoned property list.

31. a. Any interested party may submit in writing a request to the public officer that a property be included on the abandoned property list prepared pursuant to section 36 of P.L.1996, c.62 (C.55:19-55), specifying the street address and block and lot number of the property to be included, and the grounds for its inclusion. Within 30 days of receipt of any such request, the public officer shall provide a written response to the party, either indicating that the property will be added to the list of abandoned properties or, if not, the reasons for not adding the property to the list. For the purposes of this section, "interested party" shall include any resident of the municipality, any owner or operator of a business within the municipality or any organization representing the interests of residents or engaged in furthering the revitalization and improvement of the neighborhood in which the property is located.

b. Any interested party may participate in any redetermination hearing held by the public officer pursuant to subsection e. of section 36 of P.L.1996, c.62 (C.55:19-55). Upon written request by any interested party, the public officer shall provide the party with at least 20 days' notice of any such hearing. The party shall provide the public officer with notice at least 10 days before the hearing of its intention to participate, and the nature of the testimony or other information that is proposes to submit at the hearing.

32. R.S.54:5-86 is amended to read as follows:

Action by municipality to foreclosure right of redemption.

54:5-86. a. When the municipality is the purchaser of a tax sale certificate, the municipality, or its assignee or transferee, may, at any time after the expiration of the term of six months from the date of sale, institute an action

to foreclose the right of redemption. Except as provided in subsection a. of section 39 of P.L.1996, c.62 (C.55:19-58) or as provided in subsection b. of this section, for all other persons that do not acquire a tax sale certificate from a municipality, an action to foreclose the right of redemption may be instituted at any time after the expiration of the term of two years from the date of sale of the tax sale certificate. On instituting the action the right to redeem shall exist and continue until barred by the judgment of the Superior Court.

b. Any person holding a tax sale certificate on a property that meets the definition of abandoned property as set forth in P.L.2003, c.210 (C.55:19-78 et al.), either at the time of the tax sale or thereafter, may at any time file an action with the Superior Court in the county wherein said municipality is situate, demanding that the right of redemption on such property be barred, pursuant to R.S.54:5-77.

c. Any person holding a tax sale certificate on a property that meets the definition of abandoned property as set forth in P.L.2003, c.210 (C.55:19-78 et al.), either at the time of the tax sale or thereafter, may enter upon that property at any time after written notice to the owner by certified mail return receipt requested in order to make repairs, or abate, remove or correct any condition harmful to the public health, safety and welfare, or any condition that is materially reducing the value of the property.

d. Any sums incurred or advanced pursuant to subsection c. of this section may be added to the unpaid balance due the holder of the tax sale certificate at the statutory interest rate for subsequent liens.

33. This act shall take effect immediately.

Approved January 8, 2004.

CHAPTER 211

AN ACT concerning elevator fire recall keys and supplementing P.L.1983, c.383 (C.52:27D-192 et seq.).

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

C.52:27D-198.13 Regulations concerning elevator fire recall keys.

1. Not later than six months following the effective date of P.L.2003, c.211 (C.52:27D-198.13 et seq.), the Commissioner of Community Affairs shall promulgate regulations requiring all new elevators, and all elevators

undergoing reconstruction, to be equipped to operate with standardized fire recall keys.

C.52:27D-198.14 Installation of lock box in elevator buildings to hold fire recall keys.

2. a. A municipality, by ordinance, may require the installation of a lock box in each building located in the municipality that has an elevator. A building's elevator fire recall keys shall be placed in the lock box. Lock boxes shall be installed at locations that are readily accessible to fire fighting officials. A building that has elevators with standardized fire recall keys, in accordance with section 1 of P.L.2003, c.211 (C.52:27D-198.13), shall be exempt from this provisions of this section.

b. Not later than the last day of the sixth month following the effective date of P.L.2003, c.211 (C.52:27D-198.13 et seq.), the Commissioner of Community Affairs shall promulgate regulations establishing specifications for elevator fire recall key lock boxes.

3. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 212

AN ACT concerning the registration of motor vehicles and amending R.S.39:3-4.

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

1. R.S.39:3-4 is amended to read as follows:

Registration of automobiles and motorcycles, application, registration certificates; expiration; issuance; violations; notification.

39:3-4. Except as hereinafter provided, every resident of this State and every nonresident whose automobile or motorcycle shall be driven in this State shall, before using such vehicle on the public highways, register the same, and no automobile or motorcycle shall be driven unless so registered.

Such registration shall be made in the following manner: An application in writing, signed by the applicant or by an agent or officer, in case the applicant is a corporation, shall be made to the chief administrator or the chief administrator's agent, on forms prepared and supplied by the chief administrator, containing the name, street address of the residence or the business of the owner, mailing address, if different from the street address of the owner's residence or business, and age of the owner, together with a description of the character

of the automobile or motorcycle, including the name of the maker and the vehicle identification number, or the manufacturer's number or the number assigned by the chief administrator if the vehicle does not have a vehicle identification number, and any other statement that may be required by the chief administrator. A post office box shall appear on the application only as part of a mailing address that is submitted by the owner, agent or officer, as the case may be, in addition to the street address of the applicant's residence or business; provided, however, the chief administrator, upon application, shall permit a person who was a victim of a violation of N.J.S.2C:12-10, N.J.S.2C:14-2, or N.J.S.2C:25-17 et seq., or who the chief administrator otherwise determines to have good cause, to use as a mailing address a post office box, an address other than the applicant's address or other contact point. An owner whose last address appears on the records of the division as a post office box shall change his address on his application for renewal to the street address of his residence or business and, if different from his street address, his mailing address unless the chief administrator has determined, pursuant to this section, that the owner may use a post office box, an address other than the owner's address or other contact point as a mailing address. The application shall contain the name of the insurer of the vehicle and the policy number. If the vehicle is a leased motor vehicle, the application shall make note of that fact and shall include along with the name and street address of the lessor the name, street address and driver license number of the lessee.

Thereupon the chief administrator shall have the power to grant a registration certificate to the owner of any motor vehicle, if over 17 years of age, application for the registration having been properly made and the fee therefor paid, and the vehicle being of a type that complies with the requirements of this title. The form and contents of the registration certificate to be issued shall be determined by the chief administrator.

If the vehicle is a leased motor vehicle, the registration certificate shall, in addition to containing the name and street address of the lessor, identify the vehicle as a leased motor vehicle.

The chief administrator shall maintain a record of all registration certificates issued, and of the contents thereof.

Every registration shall expire and the registration certificate thereof become void on the last day of the twelfth calendar month following the calendar month in which the certificate was issued; provided, however, that the chief administrator may, at his discretion, require registrations which shall expire, and issue certificates thereof which shall become void, on a date fixed by him, which date shall not be sooner than three months nor later than 26 months after the date of issuance of such certificates, and the fees for such registrations, including any other fees or charges collected in connection with the registration fee, shall be fixed by the chief administrator in amounts proportionately less

or greater than the fees established by law. The chief administrator may fix the expiration date for registration certificates at a date other than 12 months if the chief administrator determines that the change is necessary, appropriate or convenient in order to aid in implementing the vehicle inspection requirements of chapter 8 of Title 39 or for other good cause. The chief administrator may, for good cause extend a registration beyond the expiration date that appears upon the registration certificate for periods not to exceed 12 additional months. The chief administrator may extend the expiration date of a registration without payment of a proportionate fee when the chief administrator determines that such extension is necessary for good cause. If any registration is so extended, the owner shall pay upon renewal the full registration fee for the period fixed by the chief administrator as if no extension had been granted.

All motorcycles for which registrations have been issued prior to the effective date of P.L.1989, c.167 and which are scheduled to expire between November 1 and March 31 shall, upon renewal, be issued registrations by the chief administrator which shall expire on a date fixed by him, but in no case shall that expiration date be earlier than April 30 nor later than October 31. The fees for the renewal of the motorcycle registrations authorized under this paragraph shall be fixed by the chief administrator in an amount proportionately less or greater than the fee established by R.S.39:3-21.

Application forms for all renewals of registrations for passenger automobiles shall be sent to the last addresses of owners of motor vehicles and motorcycles, as they appear on the records of the division.

No person owning or having control over any unregistered vehicle shall permit the same to be parked or to stand on a public highway.

Any police officer is authorized to remove any unregistered vehicle from the public highway to a storage space or garage, and the expense involved in such removal and storing of the vehicle shall be borne by the owner of the vehicle, except that the expense shall be borne by the lessee of a leased vehicle.

Any person violating the provisions of this section shall be subject to a fine not exceeding \$100, except that for the misstatement of any fact in the application required to be made to the chief administrator, the person making such statement or omitting the statement that the motor vehicle is to be used as a leased motor vehicle when that is the case shall be subject to the penalties provided in R.S.39:3-37.

The chief administrator may extend the expiration date of a registration certificate without payment of a proportionate fee when the chief administrator determines that such extension is necessary, appropriate or convenient to the implementation of vehicle inspection requirements. If any registration certificate is so extended, the owner shall pay upon renewal the full registration fee for the period fixed by the chief administrator as if no extension had been granted.

The New Jersey Motor Vehicle Commission shall make a reasonable effort to notify any lessor whose name and address is on file with the commission, or any other lessor the commission may determine it is necessary to notify, of the requirements of this amendatory act.

A lessor doing business in this State shall notify in writing the lessee of a motor vehicle registered pursuant to this Title of any change in its policies or procedures affecting the registration of the motor vehicle.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 213

AN ACT concerning bail sufficiency hearings and supplementing Title 2A of the New Jersey Statutes.

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

C.2A:162-13 Bail sufficiency hearings.

1. When a person charged with an offense posts cash bail or secures a bail bond, the court may, upon the request of the prosecutor, conduct an inquiry to determine the reliability of the obligor or person posting cash bail, the value and sufficiency of any security offered, the relationship of the obligor or person posting cash bail to the defendant and the defendant's interest in ensuring that the bail is not forfeited, and whether the funds used to post the cash bail or secure the bail bond were acquired as a result of criminal or unlawful conduct. The court may examine, under oath or otherwise, any person who may possess relevant information, and may inquire into any matter appropriate to its determination, including, but not limited to, the following:

- a. The character, background and reputation of the person posting cash bail;
- b. The relationship of the person posting cash bail or securing a bail bond to the defendant;
- c. The source of any money posted as cash bail and whether any such money constitutes the fruits of criminal or unlawful conduct;
- d. The character, background and reputation of any person who has indemnified or agreed to indemnify and obligor on the bond;
- e. The character, background and reputation of any obligor, or, in the case of a surety bond, the qualifications of the surety and its executing agent;

f. The source of any money or property deposited by any obligor as security and whether such money or property constitutes the fruits of criminal or unlawful conduct; and

g. The source of any money or property delivered or agreed to be delivered by any obligor as indemnification on the bond and whether such money or property constitutes the fruits of criminal or unlawful conduct.

At the conclusion of the inquiry, the court shall issue an order either approving or disapproving the bail.

C.2A:162-14 Procedure; governed by court rules.

2. The procedure to determine the sufficiency of bail shall be governed by rules adopted by the Supreme Court.

3. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 214

AN ACT concerning suicide, supplementing Title 30 of the Revised Statutes and repealing section 6 of P.L. 1985, c.195.

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

C.30:9A-22 Findings, declarations relative to youth suicide.

1. The Legislature finds and declares that:

a. Overall, suicide is the 11th leading cause of death for all Americans and the third leading cause of death for young people ages 15 to 24.

b. During the period from 1952 to 1995, the incidence of suicide among adolescents and young adults nearly tripled. During the period from 1980 to 1997, the rate of suicide among persons ages 15 to 19 increased by 11% and among persons ages 10 to 14 by 109%. Although suicide among young children is a rare event, the dramatic increase in the rate among persons ages 10 to 14 underscores the urgent need for intensifying efforts to prevent suicide among persons in this age group. It is also widely reported that the risk for attempted or completed suicide varies with race, religion, age and sexual identity.

c. In 1996, 72 persons under the age of 25 committed suicide in New Jersey, and every month at least 127 young people in this State attempt suicide. Over 40% of the suicide attempts of minors are second or subsequent attempts. Non-fatal suicide attempts outnumber suicide death and often result in significant medical and economic costs, and in physical, emotional and

psychological damage. Like suicide deaths, however, suicide attempts are generally under-reported.

d. It is estimated that fewer than 25% of suicide attempts are reported. When they are reported, the reaction often makes the person less likely to seek further help. Suicide evokes complicated and uncomfortable reactions that stigmatize the survivors and increase their burden of hurt, isolation and secrecy. This secrecy also tends to diminish the accuracy and amount of information available about persons who have attempted or completed suicides, which information could help suicide prevention efforts.

e. Therefore, it is necessary to establish a program in this State to: collect information about youths who attempt suicide and improve the information available to both professionals, who are in contact with youth at risk of suicide, and families at risk; identify and provide suitable intervention services to reduce the incidence of suicide; and educate youths and families at risk about the resources available for suicide prevention and intervention.

C.30:9A-23 Definitions relative to youth suicide.

2. As used in this act:

"Alcohol and drug counselor" means a person who is a certified alcohol and drug counselor or a licensed clinical alcohol and drug counselor pursuant to P.L.1997, c.331 (C.45:2D-1 et seq.).

"Attempted suicide" means destructive behavior intended by the actor to result in the actor's harm or death.

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Completed suicide" means a death that is known or reasonably suspected to have resulted from an intentional act of the deceased, regardless of whether it has been ruled a suicide by a medical examiner.

"Council" means the New Jersey Youth Suicide Prevention Advisory Council established pursuant to this act.

"Division" means the Division of Mental Health Services in the Department of Human Services.

"Teaching staff member" means a member of the professional staff of any school district, regional board of education or the board of trustees of a charter school, or any board of education of a county vocational school, who holds an office, position or employment of such character that the qualifications for the office, position or employment require the member to hold a valid and effective standard, provisional or emergency certificate, appropriate to the member's office, position or employment, issued by the State Board of Examiners. Teaching staff member includes a school nurse and a school athletic trainer.

"Youth" means a person 24 years of age or younger.

C.30:9A-24 Report by teacher of attempted, completed suicide by student; other reporting requirements.

3. a. Any teaching staff member, who, as a result of information obtained in the course of the person's employment, has reasonable cause to suspect or believe that a student has attempted or completed suicide, shall promptly report such information to the division in a form and manner prescribed by the division.

b. A nonpublic school is encouraged to require any member of its professional staff, who, as a result of information obtained in the course of the person's employment, has reasonable cause to suspect or believe that a student has attempted or completed suicide, to promptly report such information to the division in a form and manner prescribed by the division.

As used in this subsection, "nonpublic school" means an elementary or secondary school within the State, other than a public school, offering education in grades K-12 or any combination thereof, at which a child may legally fulfill compulsory school attendance requirements.

c. Any licensed psychologist, social worker, marriage and family therapist, professional counselor, physician, physician assistant, alcohol and drug counselor, or registered nurse or licensed practical nurse licensed in this State pursuant to Title 45 of the Revised Statutes, who, as a result of information obtained in the course of the person's employment, has reasonable cause to suspect or believe that a youth has attempted or completed suicide, shall promptly report such information to the division in a form and manner prescribed by the division.

d. Any public health official, probation officer, employee of the Superior Court, Chancery Division, Family Part, Certified Domestic Violence Specialist, or member of a professional group identified by the council as having a likelihood to know about suicide attempts and deaths, who, as a result of information obtained in the course of the person's employment, has reasonable cause to suspect or believe that a youth has attempted or completed suicide, is encouraged to promptly report such information to the division in a form and manner prescribed by the division.

e. The reporting form established by the division shall not require the reporter to identify the student or youth by name or other unique identifier, but may require that the reporter supply non-identifying demographic information about the student or youth, other attempts made by the student or youth and the response or referral made to deal with the incident.

f. The reporting form shall be submitted to a designated employee of the division with responsibility for compiling data from the reports. Information contained in the reports shall not be considered a public record, but the division

may aggregate the data for the purpose of preparing an annual report pursuant to section 6 of this act.

g. The division shall offer to provide persons who are required or encouraged to report an attempted or completed suicide with current information about public and private assistance available to survivors and families of attempted and completed suicides and professionals who deal with suicide.

h. The reporting of an attempted or completed suicide pursuant to this section shall not replace or alter any other requirement of law or professional standard or obligation that requires a person to evaluate a death or report an attempted or completed suicide.

i. Any person who reports an attempted or completed suicide pursuant to this act shall have immunity from any civil or criminal liability on account of that report, unless the person has acted in bad faith or with malicious purpose.

j. No provision of this act shall be deemed to require the disclosure of, or penalize the failure to disclose, any information which would be privileged pursuant to the provisions of sections 18 through 23, inclusive, of P.L. 1960, c.52 (C.2A:84A-18 through 2A:84A-23).

C.30:9A-25 New Jersey Youth Suicide Prevention Advisory Council.

4. There is established in the Department of Human Services the New Jersey Youth Suicide Prevention Advisory Council.

a. The purpose of the council shall be to: examine existing needs and services and make recommendations to the division for youth suicide reporting, prevention and intervention; advise the division on the content of informational materials to be made available to persons who report attempted or completed suicides; and advise the division in the development of regulations required pursuant to this act.

b. The council shall consist of 17 members as follows:

(1) the Commissioners of Human Services, Health and Senior Services, and Education, the executive director of the Juvenile Justice Commission established pursuant to P.L.1995, c.284 (C.52:17B-169 et seq.) and the chairman of the Community Mental Health Citizens Advisory Board established pursuant to P.L.1957, c.146 (C.30:9A-1 et seq.), or their designees, who shall serve ex officio;

(2) six public members appointed by the Governor, as follows: one person who is a current member of a county mental health advisory board, one person with personal or family experience with suicide, one person who is a current or retired primary or secondary school teacher, one person who is a current or former member of a local board of education, one psychiatrist and one person with professional experience in the collection and reporting of social science data;

(3) three public members appointed by the President of the Senate, no more than two of whom are members of the same political party, one of whom has volunteer or paid experience in the provision of services to survivors of suicide or youth at risk of attempting suicide, one of whom is an alcohol and drug counselor, and one of whom is a representative of the New Jersey Traumatic Loss Coalition; and

(4) three public members appointed by the Speaker of the General Assembly, no more than two of whom are members of the same political party, one of whom has knowledge of and interest in the prevention of youth suicide and the provision of education about suicide to high-risk populations, including religious, racial, ethnic or sexual minorities, one of whom is a pediatrician, and one of whom is a school-based counselor.

c. The public members shall be appointed no later than 60 days after the date of enactment of this act.

d. The public members shall serve for a term of five years; but, of the members first appointed, three shall serve for a term of two years, three for a term of three years, three for a term of four years and three for a term of five years. Members are eligible for reappointment upon the expiration of their terms. Vacancies in the membership of the council shall be filled in the same manner provided for the original appointments.

e. The council shall organize as soon as practicable following the appointment of its members and shall select a chairperson and vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the council.

f. The public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties and within the limits of funds available to the council.

g. The council shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

h. The Department of Human Services shall provide staff support to the council.

C.30:9A-26 Public awareness campaign on youth suicide prevention and intervention.

5. The Commissioner of Human Services shall develop and publicize, in consultation with the council, a public awareness campaign on youth suicide prevention and intervention, the goals of which shall be to:

a. increase voluntary reporting of youth suicides and attempts at suicide by professionals who are likely to know of suicides and attempts in the course of their employment;

- b. increase referrals by these professionals to therapeutic services available to youths who contemplate or attempt suicide;
- c. increase public awareness of the incidence and causes of youth suicide attempts and decrease the stigma currently associated with depression and suicide; and
- d. encourage the use by families of short-term and long-term public and private mental health services, as well as other services, to reduce the incidence of attempted and completed suicides by youths.

C.30:9A-27 Compilation of data, annual report.

- 6. a. The division shall compile data about reported attempted and completed suicides by youths in the State, without identifying any individuals involved.
- b. The Commissioner of Human Services shall issue a report annually to the council, the Governor and the Legislature containing a summary of the data compiled by the division that includes aggregate demographic information about youths who attempt or complete suicide. The report shall include any recommendations for legislation or regulatory changes that would aid in the collection of more accurate data or the provision of more effective suicide prevention and intervention.
- c. The commissioner shall provide specific findings about youth suicides and attempts to the council, as soon as possible, to assist the council in fulfilling its responsibility under this act to make recommendations about youth suicide prevention and intervention.

C.30:9A-28 Regulations.

- 7. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt regulations to carry out the purposes of this act.

Repealer.

- 8. Section 6 of P.L.1985, c.195 (C.30:9A-17) is repealed.
- 9. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 215

AN ACT appropriating \$1,000,000 from the "1996 Economic Development Site Fund," established pursuant to section 20 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L. 1996,

c.70, for an economic development grant, and cancels a previous appropriation of the same amount from the fund.

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

1. There is appropriated to the "New Jersey Commerce and Economic Growth Commission" established pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63), from the "1996 Economic Development Site Fund," established pursuant to section 20 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, the sum of \$1,000,000 for a grant to Gloucester City, Camden County, to fund the costs of any site preparations, infrastructure improvements and the reconstruction of any piers or bulkheads within the Gloucester City waterfront redevelopment area.

2. The amount of \$1,000,000 previously appropriated to the "New Jersey Commerce and Economic Growth Commission" established pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63), from the "1996 Economic Development Site Fund," established pursuant to section 20 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, for the purposes set forth in subsection g. of section 1 of P.L.1999, c.99 is canceled.

3. The expenditure of the funds appropriated by this act is subject to the provisions and conditions of P.L.1996, c.70, and to any regulations adopted pursuant thereto.

4. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 216

AN ACT establishing a program to recognize educational services professionals and supplementing Title 18A of the New Jersey Statutes.

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

C.18A:29B-1 Short title.

1. This act shall be known and may be cited as the "Governor's Annual Educational Services Professionals Recognition Act."

C.18A:29B-2 Findings, declarations relative to recognition of educational services professionals.

2. The Legislature finds and declares that:

- a. the public school system in this State is made more successful by the work of educational services professionals;
- b. educational services professionals provide important services outside of the classroom environment that improve students' academic opportunities, workforce preparedness, and overall quality of life;
- c. providing for local and Statewide recognition of outstanding educational services professionals will demonstrate our appreciation of their contributions and encourage others to strive for the same; and
- d. the purpose of this act is to provide for Statewide awards and recognition of the excellence of current school district employees employed in a position requiring an educational services certificate.

C.18A:29B-3 "Educational services professional" defined.

3. As used in this act, "educational services professional" means a person who holds an educational services certificate issued by the State Board of Examiners and who is employed in a position that requires the certificate.

C.18A:29B-4 Educational services professional recognition selection panel.

4. In order to provide Statewide awards and recognition of the excellence of current educational services professionals, each school district may annually establish an educational services professional recognition selection panel composed of members of the teaching staff, administrative staff, parents and other citizens for the purpose of selecting recipients for the Governor's Annual Award for Outstanding Educational Services Professionals.

The panel shall be composed of up to nine members as follows:

- a. three members to be selected by the local board of education;
- b. three members to be selected by the local bargaining unit which represents the educational services professionals of the district. Should that bargaining unit choose not to appoint members to the panel, the board of education shall appoint up to three additional members; and
- c. three additional members selected jointly by the members selected under subsections a. and b. of this section.

Should the members selected pursuant to subsections a. and b. of this section fail to agree on the selection of the three additional members, the additional members shall be selected by the local mayor from among the district's parent organization.

C.18A:29B-5 Nominations for Governor's Annual Educational Services Professionals Recognition Award.

5. The educational services professional recognition selection panel may nominate to the local board of education one educational services professional from each school in the district having 10 or more educational services professionals who, because of their knowledge, commitment, and creativity, have made an extraordinary contribution during the previous school year to the quality of education in that district. Schools having fewer than 10 educational services professionals may consolidate with other schools for the purpose of participating in this program, provided that the combined number of educational services professionals is 10 or more. In selecting educational services professionals for the Governor's Annual Award for Outstanding Educational Services Professionals, the panel may solicit nominations from teaching staff, administrative staff, parents, students, and community members.

Educational services professionals who are selected for the Governor's Annual Educational Services Professionals Recognition Award shall have distinguished themselves through exceptional contributions in the following areas:

- a. interactions with students, staff, and parents while functioning as a frontline advocate for the student between home and school;
- b. fostering an environment for learning and exploring creative alternatives to enable all students to achieve to their fullest potential;
- c. supporting classroom instruction by addressing the educational, social, and emotional needs of all students; and
- d. personal interactions with students that demonstrate professionalism while retaining respect, humor, compassion, and concern for the whole child.

The selection panel shall consider evidence of these contributions in making its decisions. Educational services professionals selected for this award shall have received exemplary local district evaluation reports. School districts may also consider other evidence of outstanding educational services performance.

Educational services professionals selected for the Governor's Award shall also have other acceptable personnel records which are devoid of recent sanctions or deficiencies.

The local board of education may certify to the commissioner the name of one educational services professional from each school or combination of schools in the district having 10 or more educational services professionals as a recipient of the Governor's Award. The local board may not certify the names of any educational services professionals who were not nominated by the educational services professionals selection panel. Districts that do

not comply with all the provisions of this act shall not be included in the Governor's Award program.

Award recipients shall not be eligible for renomination for two years following their selection.

C.18A:29B-6 Convocation on "Excellence in Educational Services."

6. Annually, the Governor shall sponsor a convocation on "Excellence in Educational Services" at which time each educational services professional who has been selected by a local school district shall be awarded a certificate of commendation.

C.18A:29B-7 Rules, regulations.

7. The State Board of Education shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations which are necessary to effectuate the purposes of this act.

8. This act shall take effect immediately and shall first apply to the 2003-2004 school year.

Approved January 9, 2004.

CHAPTER 217

AN ACT concerning motor vehicle titles, amending R.S.39:10-24 and supplementing chapter 21 of Title 2C of the New Jersey Statutes.

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

1. R.S.39:10-24 is amended to read as follows:

Violations of chapter; penalties.

39:10-24. A person who purposely or knowingly violates a provision of this chapter for which a specific penalty is not provided herein shall be subject to the penalty provided in section 2 of P.L.2003, c.217 (C.2C:21-4.8).

C.2C:21-4.8 Motor vehicle title offenses, grading.

2. a. A person who purposely or knowingly violates a provision of chapter 10 of Title 39 of the Revised Statutes, for which a specific penalty is not provided in that chapter or this section, shall be guilty of a crime of the fourth degree.

b. A person who purposely or knowingly commits the following violations of chapter 10 of Title 39 of the Revised Statutes shall be guilty of a crime of the third degree:

(1) Makes a misrepresentation or false statement in any title papers or other papers submitted to the Chief Administrator of the New Jersey Motor Vehicle Commission in connection therewith;

(2) Purchases, receives or obtains a motor vehicle on a title paper in violation of chapter 10 of Title 39 of the Revised Statutes;

(3) Forges, changes or counterfeits a part of title papers;

(4) Misrepresents a number placed on a motor vehicle by the manufacturer, or in any other manner misrepresents the description of a motor vehicle; or

(5) Uses title papers on or for a wrong motor vehicle, with intent to evade or violate the requirements of chapter 10 of Title 39 of the Revised Statutes.

3. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 218

AN ACT concerning assault and amending N.J.S.2C:12-1.

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

1. N.J.S.2C:12-1 is amended to read as follows:

Assault.

2C:12-1. Assault. a. Simple assault. A person is guilty of assault if he:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon;

or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

(1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or

- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon; or
- (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or
- (5) Commits a simple assault as defined in subsection a. (1), (2) or (3) of this section upon:
- (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority or because of his status as a law enforcement officer; or
- (b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or
- (c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or
- (d) Any school board member, school administrator, teacher, school bus driver or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board or any school bus driver employed by an operator under contract to a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a school bus driver; or
- (e) Any employee of the Division of Youth and Family Services while clearly identifiable as being engaged in the performance of his duties or because of his status as an employee of the division; or
- (f) Any justice of the Supreme Court, judge of the Superior Court, judge of the Tax Court or municipal judge while clearly identifiable as being engaged in the performance of judicial duties or because of his status as a member of the judiciary; or
- (g) Any operator of a motorbus or the operator's supervisor or any employee of a rail passenger service while clearly identifiable as being engaged in the performance of his duties or because of his status as an operator of a motorbus or as the operator's supervisor or as an employee of a rail passenger service; or
- (h) Any Department of Corrections employee, county corrections officer, juvenile corrections officer, State juvenile facility employee, juvenile detention staff member, juvenile detention officer, probation officer or any sheriff,

undersheriff, or sheriff's officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; or

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily injury to another person; or

(7) Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury; or

(8) Causes bodily injury by knowingly or purposely starting a fire or causing an explosion in violation of N.J.S.2C:17-1 which results in bodily injury to any emergency services personnel involved in fire suppression activities, rendering emergency medical services resulting from the fire or explosion or rescue operations, or rendering any necessary assistance at the scene of the fire or explosion, including any bodily injury sustained while responding to the scene of a reported fire or explosion. For purposes of this subsection, "emergency services personnel" shall include, but not be limited to, any paid or volunteer fireman, any person engaged in emergency first-aid or medical services and any law enforcement officer. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this paragraph upon proof of a violation of N.J.S.2C:17-1 which resulted in bodily injury to any emergency services personnel; or

(9) Knowingly, under circumstances manifesting extreme indifference to the value of human life, points or displays a firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer; or

(10) Knowingly points, displays or uses an imitation firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose; or

(11) Uses or activates a laser sighting system or device, or a system or device which, in the manner used, would cause a reasonable person to believe that it is a laser sighting system or device, against a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. As used in this paragraph, "laser sighting system or device" means any system or device that is integrated with or affixed to a firearm and emits a laser light beam that is used to assist in the sight alignment or aiming of the firearm.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2), b. (7), b. (9) and b. (10) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree. Aggravated assault under subsection b.(8) is a crime of the third degree if the victim suffers bodily injury; if the victim suffers significant bodily injury or serious bodily injury it is a crime of the second degree. Aggravated assault under subsection b.(11) is a crime of the third degree.

c. (1) A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

(2) Assault by auto or vessel is a crime of the third degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L. 1981, c.512 (C.39:4-50.4a) and serious bodily injury results and is a crime of the fourth degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L. 1981, c.512 (C.39:4-50.4a) and bodily injury results.

(3) Assault by auto or vessel is a crime of the second degree if serious bodily injury results from the defendant operating the auto or vessel while in violation of R.S.39:4-50 or section 2 of P.L. 1981, c.512 (C.39:4-50.4a) while:

(a) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(b) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(c) driving through a school crossing as defined in R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.

Assault by auto or vessel is a crime of the third degree if bodily injury results from the defendant operating the auto or vessel in violation of this paragraph.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L. 1987, c.101 (C.2C:35-7) may be used in a prosecution under subparagraph (a) of paragraph (3) of this section.

It shall be no defense to a prosecution for a violation of subparagraph (a) or (b) of paragraph (3) of this subsection that the defendant was unaware that

the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be a defense to a prosecution under subparagraph (a) or (b) of paragraph (3) of this subsection that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. (Deleted by amendment, P.L.2001, c.443).

f. A person who commits a simple assault as defined in paragraph (1), (2) or (3) of subsection a. of this section in the presence of a child under 16 years of age at a school or community sponsored youth sports event is guilty of a crime of the fourth degree. The defendant shall be strictly liable upon proof that the offense occurred, in fact, in the presence of a child under 16 years of age. It shall not be a defense that the defendant did not know that the child was present or reasonably believed that the child was 16 years of age or older. The provisions of this subsection shall not be construed to create any liability on the part of a participant in a youth sports event or to abrogate any immunity or defense available to a participant in a youth sports event. As used in this act, "school or community sponsored youth sports event" means a competition, practice or instructional event involving one or more interscholastic sports teams or youth sports teams organized pursuant to a nonprofit or similar charter or which are member teams in a youth league organized by or affiliated with a county or municipal recreation department and shall not include collegiate, semi-professional or professional sporting events.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 219

AN ACT concerning child pornography and amending P.L.1994, c.133.

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

1. Section 2 of P.L.1994, c.133 (C.2C:7-2) is amended to read as follows:

C.2C:7-2 Registration of sex offenders; definition; requirements.

2. a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

(2) A person who in another jurisdiction is required to register as a sex offender and (a) is enrolled on a full-time or part-time basis in any public or private educational institution in this State, including any secondary school, trade or professional institution, institution of higher education or other post-secondary school, or (b) is employed or carries on a vocation in this State, on either a full-time or a part-time basis, with or without compensation, for more than 14 consecutive days or for an aggregate period exceeding 30 days in a calendar year, shall register in this State as provided in subsections c. and d. of this section. A person who fails to register as required under this act shall be guilty of a crime of the fourth degree.

b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1 or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraphs (3) or (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1, criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender is not the parent of the victim; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

c. A person required to register under the provisions of this act shall do so on forms to be provided by the designated registering agency as follows:

(1) A person who is required to register and who is under supervision in the community on probation, parole, furlough, work release, or a similar program, shall register at the time the person is placed under supervision or no later than 120 days after the effective date of this act, whichever is later, in accordance with procedures established by the Department of Corrections, the Department of Human Services, the Juvenile Justice Commission established pursuant to section 2 of P.L. 1995, c.284 (C.52:17B-170) or the Administrative Office of the Courts, whichever is responsible for supervision;

(2) A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release in accordance with procedures established by the Department of Corrections, the Department of Human Services or the Juvenile Justice Commission;

(3) A person moving to or returning to this State from another jurisdiction shall register with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police within 120 days of the effective date of this act or 10 days of first residing in or returning to a municipality in this State, whichever is later;

(4) A person required to register on the basis of a conviction prior to the effective date who is not confined or under supervision on the effective date of this act shall register within 120 days of the effective date of this act with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police;

(5) A person who in another jurisdiction is required to register as a sex offender and who is enrolled on a full-time or part-time basis in any public or private educational institution in this State, including any secondary school, trade or professional institution, institution of higher education or other post-secondary school shall, within ten days of commencing attendance at such educational institution, register with the chief law enforcement officer of the municipality in which the educational institution is located or, if the municipality does not have a local police force, the Superintendent of State Police;

(6) A person who in another jurisdiction is required to register as a sex offender and who is employed or carries on a vocation in this State, on either a full-time or a part-time basis, with or without compensation, for more than

14 consecutive days or for an aggregate period exceeding 30 days in a calendar year, shall, within ten days after commencing such employment or vocation, register with the chief law enforcement officer of the municipality in which the employer is located or where the vocation is carried on, as the case may be, or, if the municipality does not have a local police force, the Superintendent of State Police;

(7) In addition to any other registration requirements set forth in this section, a person required to register under this act who is enrolled at, employed by or carries on a vocation at an institution of higher education or other post-secondary school in this State shall, within ten days after commencing such attendance, employment or vocation, register with the law enforcement unit of the educational institution, if the institution has such a unit.

d. Upon a change of address, a person shall notify the law enforcement agency with which the person is registered and shall re-register with the appropriate law enforcement agency no less than 10 days before he intends to first reside at his new address. Upon a change of employment or school enrollment status, a person shall notify the appropriate law enforcement agency no later than five days after any such change. A person who fails to notify the appropriate law enforcement agency of a change of address or status in accordance with this subsection is guilty of a crime of the fourth degree.

e. A person required to register under paragraph (1) of subsection b. of this section or under paragraph (3) of subsection b. due to a sentence imposed on the basis of criteria similar to the criteria set forth in paragraph (1) of subsection b. shall verify his address with the appropriate law enforcement agency every 90 days in a manner prescribed by the Attorney General. A person required to register under paragraph (2) of subsection b. of this section or under paragraph (3) of subsection b. on the basis of a conviction for an offense similar to an offense enumerated in paragraph (2) of subsection b. shall verify his address annually in a manner prescribed by the Attorney General. One year after the effective date of this act, the Attorney General shall review, evaluate and, if warranted, modify pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the verification requirement.

f. Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

g. A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for

aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.

2. This act shall take effect on the 90th day following enactment.

Approved January 9, 2004.

CHAPTER 220

AN ACT concerning child pornography and amending P.L.1994, c.133.

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

1. Section 2 of P.L.1994, c.133 (C.2C:7-2) is amended to read as follows:

C.2C:7-2 Registration of sex offenders; definition; requirements.

2. a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

(2) A person who in another jurisdiction is required to register as a sex offender and (a) is enrolled on a full-time or part-time basis in any public or private educational institution in this State, including any secondary school, trade or professional institution, institution of higher education or other post-secondary school, or (b) is employed or carries on a vocation in this State, on either a full-time or a part-time basis, with or without compensation, for more than 14 consecutive days or for an aggregate period exceeding 30 days in a calendar year, shall register in this State as provided in subsections c. and d. of this section. A person who fails to register as required under this act shall be guilty of a crime of the fourth degree.

b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1 or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal

sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraphs (3) or (4) or subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L. 1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1, criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender is not the parent of the victim; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

c. A person required to register under the provisions of this act shall do so on forms to be provided by the designated registering agency as follows:

(1) A person who is required to register and who is under supervision in the community on probation, parole, furlough, work release, or a similar program, shall register at the time the person is placed under supervision or no later than 120 days after the effective date of this act, whichever is later, in accordance with procedures established by the Department of Corrections, the Department of Human Services, the Juvenile Justice Commission established pursuant to section 2 of P.L. 1995, c.284 (C.52:17B-170) or the Administrative Office of the Courts, whichever is responsible for supervision;

(2) A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release in accordance with procedures established by the Department of Corrections, the Department of Human Services or the Juvenile Justice Commission;

(3) A person moving to or returning to this State from another jurisdiction shall register with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police within 120 days of the effective date

of this act or 10 days of first residing in or returning to a municipality in this State, whichever is later;

(4) A person required to register on the basis of a conviction prior to the effective date who is not confined or under supervision on the effective date of this act shall register within 120 days of the effective date of this act with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police;

(5) A person who in another jurisdiction is required to register as a sex offender and who is enrolled on a full-time or part-time basis in any public or private educational institution in this State, including any secondary school, trade or professional institution, institution of higher education or other post-secondary school shall, within ten days of commencing attendance at such educational institution, register with the chief law enforcement officer of the municipality in which the educational institution is located or, if the municipality does not have a local police force, the Superintendent of State Police;

(6) A person who in another jurisdiction is required to register as a sex offender and who is employed or carries on a vocation in this State, on either a full-time or a part-time basis, with or without compensation, for more than 14 consecutive days or for an aggregate period exceeding 30 days in a calendar year, shall, within ten days after commencing such employment or vocation, register with the chief law enforcement officer of the municipality in which the employer is located or where the vocation is carried on, as the case may be, or, if the municipality does not have a local police force, the Superintendent of State Police;

(7) In addition to any other registration requirements set forth in this section, a person required to register under this act who is enrolled at, employed by or carries on a vocation at an institution of higher education or other post-secondary school in this State shall, within ten days after commencing such attendance, employment or vocation, register with the law enforcement unit of the educational institution, if the institution has such a unit.

d. Upon a change of address, a person shall notify the law enforcement agency with which the person is registered and shall re-register with the appropriate law enforcement agency no less than 10 days before he intends to first reside at his new address. Upon a change of employment or school enrollment status, a person shall notify the appropriate law enforcement agency no later than five days after any such change. A person who fails to notify the appropriate law enforcement agency of a change of address or status in accordance with this subsection is guilty of a crime of the fourth degree.

e. A person required to register under paragraph (1) of subsection b. of this section or under paragraph (3) of subsection b. due to a sentence imposed on the basis of criteria similar to the criteria set forth in paragraph (1) of

subsection b. shall verify his address with the appropriate law enforcement agency every 90 days in a manner prescribed by the Attorney General. A person required to register under paragraph (2) of subsection b. of this section or under paragraph (3) of subsection b. on the basis of a conviction for an offense similar to an offense enumerated in paragraph (2) of subsection b. shall verify his address annually in a manner prescribed by the Attorney General. One year after the effective date of this act, the Attorney General shall review, evaluate and, if warranted, modify pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the verification requirement.

f. Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

g. A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.

2. This act shall take effect on the 90th day following enactment.

Approved January 9, 2004.

CHAPTER 221

AN ACT concerning death records, amending R.S.26:6-1 et seq., and amending and supplementing R.S.26:8-1 et seq.

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

1. R.S.26:6-1 is amended to read as follows:

Definitions.

26:6-1. As used in this chapter: "Local registrar" or "registrar" means the local registrar of vital statistics. "State registrar" means the State Registrar of Vital Statistics.

"Registration district" or "district" means the district established by law for the registration of vital events.

"Fetal death" or "stillbirth" means death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

"Dead body" means the dead body of a human being.

The definition of the term "communicable disease" as contained in R.S.26:4-1 shall also apply to this chapter.

"Authentication" means the entry by the State Medical Examiner or a county medical examiner, funeral director or physician into the New Jersey Electronic Death Registration System of a personal identification code, digital signature or other identifier unique to that user, by which the information entered into the system by the user is authenticated by the user who assumes responsibility for its accuracy. "Authentication" also means the process by which the State registrar or a local registrar, deputy registrar, alternate deputy registrar or subregistrar indicates that person's review and approval of information entered into the system by the State Medical Examiner or a county medical examiner, funeral director or physician.

"Electronic registration system" means any electronic method, including, but not limited to, one based on Internet technology, of collecting, transmitting, recording and authenticating information from one or more responsible parties, which is necessary to complete a vital record, and is designed to replace a manual, paper-based data collection, recordation and signature system.

"New Jersey Electronic Death Registration System" or "NJ-EDRS" is an electronic registration system for completing a certification of death or fetal death record that is authorized, designed and maintained by the State registrar.

2. R.S.26:6-4 is amended to read as follows:

Computation of death rate.

26:6-4. In computing the death rate of any municipality or health district in which there is located a hospital or other institution, any death which shall take place at such hospital or institution shall not be included among deaths occurring in said municipality or health district unless the death is of a person whose last place of residence was in said municipality or health district.

Any death occurring at any such hospital or institution, of any person whose last place of residence as shown on the death certificate was outside of the limits of said municipality or health district, shall, for the purpose of computing

the death rate, be included among the deaths occurring in the municipality or health district named in the certificate as the last place of residence of the decedent.

Except where a death record is created on the NJ-EDRS, it shall be the duty of the registrar of the district in which such a death occurred promptly to notify the registrar of the district which was the last place of residence of the decedent.

3. R.S.26:6-6 is amended to read as follows:

Execution of death certificate.

26:6-6. a. The funeral director in charge of the funeral or disposition of the body of any person dying in this State shall be responsible for the proper execution of a death certificate in a legible manner, or by means of the NJ-EDRS, and filed in exchange for a burial or removal or transit permit with the local registrar of the district in which the death occurred or the body was found or with the registrar of the district in which the funeral director has his funeral home or where the burial or other disposition is to take place. In the event the death certificate is filed with the registrar of a district other than that in which the death took place or the body was found, that registrar shall, within 24 hours after issuing the permit, sign and forward the certificate of death to the registrar of the district where the death took place or the body was found, with a statement that the permit was issued. In case the death certificate is filed with the deputy registrar, alternate deputy registrar or subregistrar, he shall within 12 hours forward the certificate to his own registrar, who in turn shall forward the certificate as heretofore directed. A record created on the NJ-EDRS shall be deemed to have been transmitted to the other local registrar, or by the deputy registrar, alternate deputy registrar or subregistrar, as applicable, in accordance with the requirements of this subsection.

b. Any funeral director filing a death certificate in a registration district other than that in which the death occurred or the body was found shall immediately send the State registrar written notice by first class mail, except that a record created on the NJ-EDRS shall be deemed to have been transmitted to the State registrar in accordance with the requirements of this subsection. The notice shall contain the name of the deceased, the place and date of death, the date the certificate was filed, the name and address of the registrar with whom the certificate was filed, and the name and address of the funeral director. Failure of the State registrar to receive the notice shall be considered as failure of the funeral director to have sent it. In that case, the funeral director shall be subject to a penalty of \$25, and the State registrar shall notify the State Board of Mortuary Science of the facts in the matter.

4. R.S.26:6-7 is amended to read as follows:

Contents of death certificate.

26:6-7. The certificate of death shall contain such items as shall be listed on death certificate forms or in the NJ-EDRS provided or approved by the department under the authority of subsection c. of R.S.26:8-24.

5. R.S.26:6-8 is amended to read as follows:

Duty to furnish particulars; verification.

26:6-8. In the execution of a death certificate, the personal particulars shall be obtained by the funeral director from the person best qualified to supply them. The death and last sickness particulars shall be supplied by the attending, covering or resident physician; or if there is no attending, covering or resident physician, by an attending registered professional nurse licensed by the New Jersey Board of Nursing under P.L.1947, c. 262 (C. 45:11-23 et seq.); or if there is no attending, covering or resident physician or attending registered professional nurse, by the county medical examiner. Within a reasonable time, not to exceed 24 hours after the pronouncement of death, the attending, covering or resident physician or the county medical examiner shall execute the death certification. The burial particulars shall be supplied by the funeral director. The attending, covering or resident physician, the attending registered professional nurse, or the county medical examiner and the funeral director shall certify to the particulars supplied by them by signing their names below the list of items furnished, or by otherwise authenticating their identities and the information that they have provided through the NJ-EDRS. If a person acting under the direct supervision of the State Medical Examiner, a county medical examiner, funeral director, attending, covering or resident physician, or licensed health care facility or other public or private institution providing medical care, treatment or confinement to persons, which is registered with the NJ-EDRS, is not authorized to authenticate the information required on a certificate of death or fetal death, that person may enter that information into the NJ-EDRS in anticipation of its authentication by the State Medical Examiner or a county medical examiner, funeral director, attending, covering or resident physician, local registrar, deputy registrar, alternate deputy registrar or subregistrar, as applicable.

6. Section 4 of P.L.1983, c.308 (C.26:6-8.1) is amended to read as follows:

C.26:6-8.1 Determination, pronouncement of death by registered professional nurse.

4. a. Where there has been an apparent death, a registered professional nurse licensed by the New Jersey Board of Nursing under P.L.1947, c.262 (C.45:11-23 et seq.) may make the actual determination and pronouncement

of death and shall attest to this pronouncement by: signing in the space designated for this signature on the certificate of death under R.S.26:6-7; or, for the purposes of the NJ-EDRS, transmitting orally or in writing a report of the pronouncement to the attending, covering or resident physician, or the county medical examiner.

b. The provisions of subsection a. of this section shall only apply in the case of a death which occurs in the home or place of residence of the deceased, in a hospice, or in a long-term care facility or nursing home.

7. R.S.26:6-9 is amended to read as follows:

Death occurring without medical attendance.

26:6-9. In case of any death occurring without medical attendance, the funeral director shall notify the county medical examiner, or local registrar. In case the local registrar shall be notified, he shall immediately inform the county medical examiner and refer the case to him for investigation. The county medical examiner shall furnish the funeral director with the necessary data and last sickness particulars to make the death certificate, or shall enter the information directly into the NJ-EDRS.

8. R.S.26:6-10 is amended to read as follows:

Unavailability of attending physician.

26:6-10. In case the physician who last attended the deceased is unavailable, so that a certificate of death cannot be obtained from him in time for burial or removal:

a. the designated covering physician shall have the primary responsibility, after examining the dead body, and being satisfied that death did not result from some unlawful means, to issue a death certificate; and

b. in the absence of the designated covering physician, any other physician, after examining the dead body, and being satisfied that death did not result from some unlawful means, may issue a death certificate.

9. R.S.26:6-14 is amended to read as follows:

Issuance of burial, removal permit; correction of death certificate; completion.

26:6-14. Upon receipt of a death certificate, the local registrar shall:

a. If the certificate is properly executed and complete, issue a burial or removal permit when requested; and

b. the certificate of death is incomplete and unsatisfactory, call attention to the defects in the return, and withhold the burial or removal permit until the defects are corrected. Any person certifying to any of the particulars in

the certificate shall complete the same as directed by the local registrar in accordance with such terms as may be defined by the State registrar.

For the purposes of the NJ-EDRS, the death certificate shall be complete when the attending, covering or resident physician or the county medical examiner, and the funeral director in charge, have completed their respective portions of the death registration record.

10. R.S.26:6-16 is amended to read as follows:

Contents of burial, removal permit.

26:6-16. The burial or removal permit shall be issued upon a form or through the NJ-EDRS as prescribed by the department, signed or authenticated through the NJ-EDRS by the local registrar, and shall state:

- a. The name, age, sex, cause of death, and other necessary details required by the department;
- b. That a satisfactory certificate of death has been filed as required by law; and
- c. That permission is granted to inter, remove, or otherwise dispose of the body.

11. R.S.26:6-17 is amended to read as follows:

Fee for burial, removal permit.

26:6-17. The local registrar shall be entitled to receive a fee of \$1 for each burial or removal, or transit permit issued; except that, on or after the first day of the first month following the date of enactment of P.L.2003, c.221 but before the first day of the thirty-seventh month following the date of enactment of P.L.2003, c.221, the local registrar shall be entitled to receive a fee of \$5.

12. R.S.26:8-1 is amended to read as follows:

Definitions.

26:8-1. As used in this chapter:

"Vital statistics" means statistics concerning birth, deaths, fetal deaths and marriages.

"Vital records" means the birth, death, fetal death and marriage records from which vital statistics are produced.

"State registrar" means the State registrar of vital statistics; "Local registrar" or "registrar" means the local registrar of vital statistics of any district; and "registration district" or "district" means a registration district as constituted by this article.

"Live birth" or "birth" means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such

as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta attached.

"Authentication" means the entry by the State Medical Examiner or a county medical examiner, funeral director or physician into the New Jersey Electronic Death Registration System of a personal identification code, digital signature or other identifier unique to that user, by which the information entered into the system by the user is authenticated by the user who assumes responsibility for its accuracy. "Authentication" also means the process by which the State registrar or a local registrar, deputy registrar, alternate deputy registrar or subregistrar indicates that person's review and approval of information entered into the system by the State Medical Examiner or a county medical examiner, funeral director or physician.

"Electronic registration system" means any electronic method, including, but not limited to, one based on Internet technology, of collecting, transmitting, recording and authenticating information from one or more responsible parties, which is necessary to complete a vital record, and is designed to replace a manual, paper-based data collection, recordation and signature system.

"New Jersey Electronic Death Registration System" or "NJ-EDRS" means an electronic registration system for completing a certification of death or fetal death record that is authorized, designed and maintained by the State registrar.

13. R.S.26:8-4 is amended to read as follows:

Duty to furnish information relative to birth, death or marriage.

26:8-4. Upon demand of the State registrar in person, by mail, by means of the NJ-EDRS, or through the local registrar, every physician, midwife, informant, funeral director, or other person having knowledge of the facts relative to any birth, death, fetal death, or marriage, shall supply such information as he may possess, upon a form provided by the State registrar, or through the NJ-EDRS, or upon the original birth, death, fetal death, or marriage certificate or its electronic facsimile or digitized form thereof.

14. R.S.26:8-6 is amended to read as follows:

Registration of midwives, funeral directors.

26:8-6. a. Every midwife and funeral director shall register annually his name, address and occupation, and his license number, with the local registrar of the district in which he resides and shall register that information with the local registrar immediately upon moving to another registration district.

b. The provisions of subsection a. of this section, with respect to funeral directors, shall be satisfied by the implementation of periodic data exchanges

between the State Board of Mortuary Science and the State registrar, which shall begin no later than 18 months after the date of enactment of P.L.2003, c.221, in a manner to be prescribed by the State registrar.

15. R.S.26:8-24 is amended to read as follows:

Duties, responsibilities of State registrar.

26:8-24. The State registrar shall:

- a. Have general supervision throughout the State of the registration of vital records;
- b. Have supervisory power over local registrars, deputy local registrars, alternate deputy local registrars and subregistrars, in the enforcement of the law relative to the disposal of dead bodies and the registration of vital records;
- c. Prepare, print, and supply to all registrars, upon request therefor, all blanks and forms used in registering the records required by said law, and provide for and prescribe the use of the NJ-EDRS. No other blanks or methods of registration shall be used than those supplied or approved by the State registrar;
- d. Carefully examine the certificates or electronic files received periodically from the local registrars or originating from their jurisdiction; and, if any are incomplete or unsatisfactory, require such further information to be supplied as may be necessary to make the record complete and satisfactory;
- e. Arrange or bind, and permanently preserve the certificates of vital records, or the information comprising those records, in a systematic manner and in a form that is deemed most consistent with contemporary and developing standards of vital statistical archival record keeping;
- f. Prepare and maintain a comprehensive and continuous index of all vital records registered, the index to be arranged alphabetically;
 1. In the case of deaths, by the name of the decedent;
 2. In the case of births, by the name of child, if given, and if not, then by the name of father or mother;
 3. In the case of marriages, by the surname of the husband and also by the maiden name of the wife;
- g. Mark the birth certificate of a missing child when notified by the Missing Persons Unit in the Department of Law and Public Safety pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c); and
- h. Develop and provide to local registrars an education and training program, which the State registrar may require each local registrar to complete as a condition of retaining that position, and which may be offered to deputy local registrars, alternate deputy local registrars and subregistrars at the discretion of the State registrar, that includes material designed to implement the NJ-EDRS and to familiarize local registrars with the statutory requirements applicable

to their duties and any rules and regulations adopted pursuant thereto, as deemed appropriate by the State registrar.

C.26:8-24.1 New Jersey Electronic Death Registration System (NJ-EDRS); implementation.

16. a. The State registrar shall establish and maintain the New Jersey Electronic Death Registration System or NJ-EDRS.

(1) The system shall be fully implemented no later than 18 months after the date of enactment of P.L.2003, c.221, and shall be the required means of death registration and certification for any death or fetal death occurring in this State, subject to any exception that may be approved by the State registrar in the case of a specific death or fetal death. All participants in the death registration process, including, but not limited to, the State registrar, local registrars, deputy registrars, alternate deputy registrars, subregistrars, the State medical examiner, county medical examiners, funeral directors, attending physicians and resident physicians, licensed health care facilities, and other public or private institutions providing medical care, treatment or confinement to persons, shall be required to utilize the NJ-EDRS to provide the information that is required of them by statute or regulation.

(2) The State registrar may provide for a phased implementation of the system, beginning seven months after the date of enactment of P.L.2003, c.221, by requiring certain users, who are designated by the State registrar on a geographic or other basis for this purpose, to commence utilization of the system.

(3) Beginning no later than six months after the date of enactment of P.L.2003, c.221, the State registrar shall authorize and provide material support, in the form of system access, curriculum guidelines and user registration capability and authority, to the principal trade associations or professional organizations representing persons affected by implementation of the NJ-EDRS, for the purposes of providing training and education with regard to the NJ-EDRS. The State registrar may conduct such education and training, or authorize other entities to do so on his behalf; however, these activities shall not be construed as restricting the training and education activities of any affected trade association or professional organization, including the location, manner, fees or other means of conducting those activities on the part of the association or organization.

b. The NJ-EDRS shall, at a minimum, provide for:

(1) the direct transmission of burial permit documentation to the originating funeral home in an electronic form capable of output to a local printer;

(2) an overnight mail system for the delivery of NJ-EDRS-generated death certificates by the State registrar and local registrars, the cost of which shall be chargeable to the funeral director of record;

(3) an automated notification system to alert other responsible parties to pending cases, including notification to or from alternate local registrars;

(4) a systematic electronic payment method by which all fees are taken from accounts for which funeral homes are financially responsible and distributed, as appropriate, to the State registrar or local registrars as payment for the issuance of permits, the recording of records, the making of certified copies of death certificates, or for other charges that may be incurred;

(5) a legally binding system of digital authentication in lieu of signatures for the responsible parties and a means of assuring database security that permits users to enter the system from multiple sites and includes contemporaneous and remote data security methods to protect the system from catastrophic loss or intrusions, as well as a method of data encryption for transmission;

(6) the capacity for authorized users to retrieve data comprising the death certification record;

(7) the capacity to electronically amend and correct death records;

(8) electronic notification, upon completion of the death record and issuance of a burial permit, of the decedent's name, Social Security number and last known address and the informant to: the federal Social Security Administration, the federal Immigration and Naturalization Service, the Division of Medical Assistance and Health Services in the Department of Human Services, and such other governmental agencies as the State registrar determines will substantially contribute to safeguarding public benefit programs and diminish the criminal use of a decedent's name and other identifying information; and the New Jersey State Funeral Directors Association, in the case of a decedent participating in one of its funeral expense payment programs, in such a manner as to enable it to fulfill its fiduciary obligations for the payment of the decedent's final funeral and burial expenses;

(9) sufficient data documentation to meet contemporary and emerging standards and expectations of vital record archiving; and

(10) continuous 24-hour-a-day technical support for all authorized users of the system.

c. A provider of information that is required to complete a death certificate, or who is subject to the provisions of law governing the NJ-EDRS, shall not be deemed to be acting as a local registrar, deputy registrar, alternate deputy registrar or subregistrar solely by virtue of permitting other providers of information to gain access to the NJ-EDRS by using those other providers' identifying information.

C.26:8-24.2 "New Jersey Electronic Death Registration Support Fund."

17. a. There is established the "New Jersey Electronic Death Registration Support Fund" as a nonlapsing, revolving fund to be administered by the

Commissioner of Health and Senior Services and credited with monies received pursuant to subsection c. of R.S.26:8-62.

b. The State Treasurer is the custodian of the fund and all disbursements from the fund shall be made by the treasurer upon vouchers signed by the commissioner. The monies in the fund shall be invested and reinvested by the Director of the Division of Investment in the Department of the Treasury as are other trust funds in the custody of the State Treasurer in the manner provided by law. Interest received on the monies in the fund shall be credited to the fund.

c. The monies in the fund and the interest earned thereon shall be used to meet the development and operational costs of the NJ-EDRS, including, but not limited to, costs associated with: personnel; hardware purchases and maintenance; software and communications infrastructure; website hosting; and licensing fees, royalties and transaction expenses incurred in the development, installation, maintenance and operation of electronic payment security, authentication and encryption systems, and user training and education.

d. The Commissioner of Health and Senior Services shall, no later than 30 months after the date of enactment of P.L.2003, c.221, report to the chairs of the Senate Health, Human Services and Senior Citizens Committee, the Senate Budget and Appropriations Committee, the Assembly Health and Human Services Committee and the Assembly Appropriations Committee, or their successors, concerning the sources and uses of monies in the fund. The report shall include a description of the methodology used by the State registrar to set the fee imposed pursuant to subsection c. of R.S.26:8-62, a summary of the monies credited to fund, and a summary of expenditures by category from the fund pursuant to the authority of this section and the requirements of section 16 of P.L.2003, c.221 (C.26:8-24.1), together with any recommendations by the State registrar or the commissioner for changes that either considers should be made in the law concerning the implementation of the NJ-EDRS or the fees imposed pursuant to subsection c. of R.S.26:8-62.

C.26:8-24.3 Means of accessing NJ-EDRS; requirements.

18. The State Medical Examiner, county medical examiners, licensed health care facilities, other public or private institutions providing medical care, treatment or confinement to persons, funeral homes and physicians' private practice offices, as defined by the State registrar, shall acquire the electronic means prescribed by the State registrar to access the NJ-EDRS, or make such other arrangements as are necessary for that purpose, no later than six months after the date of enactment of P.L.2003, c.221.

The State Medical Examiner and each county medical examiner, health care facility, institution, funeral home or physician's office shall employ at least one person who is qualified to use the NJ-EDRS, and is registered with

the State registrar as an authorized user of the system, by virtue of completing a course of instruction on the NJ-EDRS provided by the State registrar or an authorized agent thereof, or satisfying such other requirements as may be established by the State registrar for this purpose.

19. R.S.26:8-25 is amended to read as follows:

Duties, responsibilities of local registrar.

26:8-25. The local registrar, under the supervision and direction of the State registrar, shall:

- a. Strictly and thoroughly enforce the law relative to the disposal of dead bodies and the registration of vital records in his registration district;
- b. Supply blank forms of certificates to such persons as require them or provide access to the NJ-EDRS to responsible parties upon request;
- c. Supply to every physician, midwife, and funeral director a copy of the law relative to the registration of vital records and the disposal of dead bodies, together with such rules and regulations as may be prepared by the State registrar relative to their enforcement;
- d. Sign his name and insert the date of filing on each certificate of birth, marriage and death, or otherwise authenticate the local registrar's identity through the NJ-EDRS as prescribed by the State registrar;
- e. Examine each certificate of birth, marriage, or death when presented for record in order to ascertain whether or not it has been made in accordance with law and the instructions of the State registrar; and, if such certificate is incomplete and unsatisfactory, have the same corrected;
- f. At the expense of the municipality make a complete and accurate copy of each birth, marriage, and death certificate registered by him on a form or in a manner prescribed by the State registrar, to be preserved in his office as the local record or in the NJ-EDRS as prescribed by the State registrar;
- g. On the tenth day of each month or sooner if requested by the department, transmit to the State registrar all original birth, marriage, and death certificates received by him for the preceding month, except that a record created on the NJ-EDRS as prescribed by the State registrar shall be deemed to have been transmitted. If no births, marriages or deaths occurred in any month, he shall, on or before the tenth day of the following month, report that fact to the State registrar on a card provided for such purpose;
- h. Make an immediate report to the State registrar of any violation of this chapter or R.S.26:6-1 et seq., as well as R.S.37:1-1 et seq. coming to his knowledge;
- i. In the case of any birth in his registration district to parents who are residents of another registration district or of the marriage in his registration district of any couple who obtained the marriage license in another registration

district, or of the death in his registration district of any person who at the time of death was a resident of another registration district notify the registrar of the other registration district, within five days of the birth, marriage, or death, on forms prescribed by the State registrar. All entries relating to cause of death on the original certificate shall be entered on the death form sent to the registrar of the other registration district. A record created on the NJ-EDRS as prescribed by the State registrar shall be deemed to have been transmitted to the registrar of the other registration district;

j. Mark the birth certificate of a missing child born in his registration district when notified by the State registrar pursuant to section 3 of P.L. 1995, c.395 (C.52:17B-9.8c); and

k. Make computer facilities with access to the NJ-EDRS available to funeral directors and physicians registered with the NJ-EDRS, within the regular established business hours of the local registrar, for the purpose of providing information necessary to complete a death record.

20. R.S.26:8-26 is amended to read as follows:

Duty of subregistrar.

26:8-26. Each subregistrar shall note, on each certificate of birth or death, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within five days, with the exception that in any instance where the subregistrar accepts a certificate for a death not occurring in his district, as permitted by R.S.26:6-6, he shall forward the certificate within 12 hours to the local registrar of his district. A record created on the NJ-EDRS as prescribed by the State registrar shall be deemed to have been forwarded as required by this section.

21. R.S.26:8-48 is amended to read as follows:

Amendments to certificate, recording, authentication.

26:8-48. A certificate of birth, fetal death, marriage or death heretofore or hereafter filed with the State registrar shall not be altered or changed otherwise than by amendments properly signed, dated and witnessed, or as otherwise recorded and authenticated on the NJ-EDRS as prescribed by the State registrar.

22. R.S.26:8-52 is amended to read as follows:

Correcting death certificates, procedure.

26:8-52. Corrections to death certificates shall be signed by the physician, registered professional nurse, county medical examiner, State Medical Examiner, funeral director or informant, whose name appears upon the

certificate, or shall be otherwise recorded and authenticated on the NJ-EDRS as prescribed by the State registrar; however, any individual having personal knowledge and substantiating documentary proof of the matters sought to be corrected may apply under oath to the county medical examiner or the State Medical Examiner in a case in which the certificate was signed by the State Medical Examiner, to have the certificate corrected. The authority to sign or otherwise authenticate corrections or amendments to causes or duration of causes of death is restricted to the physician, State Medical Examiner or county medical examiner. Upon denial of an application for correction or amendment of a death certificate, a person who has applied to a county medical examiner may apply to the State Medical Examiner, who shall exercise discretion to review the matter and amend the certificate or to defer to the decision of the county medical examiner. The decision of the county medical examiner shall be deemed the final decision by a public officer in the matter unless the State Medical Examiner amends or corrects the death certificate.

23. R.S.26:8-56 is amended to read as follows:

Fee for registering birth or death.

26:8-56. The local registrar shall be paid \$1 for each birth or death certificate properly executed, registered, recorded, and promptly returned, or otherwise transmitted through the NJ-EDRS, to the State Registrar. In the case of a death registration, the fee shall be credited to the account within the NJ-EDRS of the political subdivision comprising the registration district. A local registrar shall not receive the fee if compensated by a fixed salary as provided in R.S.26:8-59.

C.26:8-59.1 Persons authorized to obtain certification, certified copy of death certificate; accounting for fees.

24. a. Persons authorized to obtain and receive a certification or certified copy of a death certificate from a local registrar, deputy registrar, alternate deputy registrar, subregistrar, or an incorporated political subdivision comprising a registration district, shall include those individuals who establish themselves as one of the following: the parent, legal guardian or other legal representative of the subject of that record; the subject's spouse, child, grandchild or sibling, if of legal age, or the subject's legal representative; an agency of State or federal government for official purposes; a person possessing an order of a court of competent jurisdiction; or a person who is authorized under other emergent circumstances as determined by the commissioner. For the purposes of this section, any employee of a mortuary registered pursuant to P.L. 1952, c.340 (C.45:7-32 et seq.), or a funeral director licensed pursuant to that act who is affiliated with a registered mortuary, if the mortuary was recorded on the original certificate of death, shall be construed to be the subject's legal

representative and entitled to obtain full and complete copies of death certificates or certifications thereof.

b. Any fee charged, by a local registrar, deputy registrar, alternate deputy registrar, subregistrar, or an incorporated political subdivision comprising a registration district, to a funeral home as the legal representative for a person in securing a certified copy of a death certificate shall be in the form of a debit against the account of the funeral home and a credit to the applicable political subdivision within the NJ-EDRS.

25. R.S.26:8-62 is amended to read as follows:

Certification, certified copy of records, search fee.

26:8-62. a. The State registrar shall, upon request, supply to a person who establishes himself as one of the following: the subject of the record of a birth, death, fetal death or marriage, as applicable; the subject's parent, legal guardian or other legal representative; the subject's spouse, child, grandchild or sibling, if of legal age, or the subject's legal representative; an agency of State or federal government for official purposes; a person possessing an order of a court of competent jurisdiction; or a person who is authorized under other emergent circumstances as determined by the commissioner, a certification or certified copy of that record, registered under the provision of this chapter, for either of which, except as provided by R.S.26:8-63, he shall be entitled to a search fee, if any, as provided by R.S.26:8-64, to be paid by the person. For the purposes of this subsection, any employee of a mortuary registered pursuant to P.L.1952, c.340 (C.45:7-32 et seq.), or a funeral director licensed pursuant to that act who is affiliated with a registered mortuary, if the mortuary was recorded on the original certificate of death, shall be construed to be the subject's legal representative and entitled to obtain full and complete copies of death certificates or certifications thereof.

b. The State registrar shall, upon request, supply to any applicant a certified transcript of any entry contained in the records of the New Jersey State census for which, except as provided by R.S.26:8-63, he shall be entitled to a search fee as provided by R.S.26:8-64, to be paid by the applicant.

c. For each death registration initiated on the NJ-EDRS on or after the first day of the first month following the date of enactment of P.L.2003, c.221 but before the first day of the thirty-seventh month following the date of enactment of P.L.2003, c.221, the State registrar shall be paid a recording fee for each record filed, whether by means of the current paper process or electronically, in an amount to be determined by the State registrar but not exceeding \$10, from the account of the funeral home, which may include this amount in the funeral expenses charged to the estate or person accepting responsibility for the disposition of the deceased's human remains and the

costs associated therewith; provided however, this fee shall not apply to the death registration of a person who died while in the military or naval or maritime or merchant marine service of the United States whose death is recorded pursuant to section 1 of P.L.1950, c.299 (C.26:6-5.2). The State registrar shall deposit the proceeds from the recording fee into the New Jersey Electronic Death Registration Support Fund established pursuant to section 17 of P.L.2003, c.221 (C.26:8-24.2).

26. R.S.26:8-69 is amended to read as follows:

Penalties; recovery.

26:8-69. Except as otherwise specifically provided in this chapter and R.S.37:1-1 et seq., any person who shall:

- a. Fail or refuse to furnish correctly any information in his possession;
- or
- b. Willfully and knowingly furnish false information affecting any certificate or record required by this chapter; or
- c. Willfully alter, otherwise than is provided by R.S.26:8-48 et seq., or willfully or knowingly falsify, any certificate or record established by this chapter; or
- d. Fail to fill out and transmit any certificate or record in the manner required by this chapter; or
- e. Being a local registrar, deputy registrar, alternate deputy registrar or subregistrar, shall fail to perform his duty as required by this chapter and by the directions of the State registrar thereunder; or
- f. Violate any of the provisions of this chapter or fail to discharge any duty required by this chapter-

Shall be subject to a penalty of not less than \$100 nor more than \$250 for each first offense and not less than \$250 nor more than \$500 for each subsequent offense.

The penalties shall be recovered in a civil action in the name of the Department of Health and Senior Services or local board in any court of competent jurisdiction.

The Superior Court or municipal court shall have jurisdiction over proceedings to enforce and collect any such penalty, if the violation has occurred within the territorial jurisdiction of the court. The proceedings shall be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

Notwithstanding the provisions of this section to the contrary, the State registrar may refer a violation of this chapter by a physician, nurse or funeral director who is licensed pursuant to Title 45 of the Revised Statutes to the appropriate professional board in the Division of Consumer Affairs in the

Department of Law and Public Safety, which shall, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), assess the penalty provided for in this subsection and assume enforcement responsibility on the same basis as it would for a violation of the statute or regulations governing the practice of those persons regulated by that board.

C.26:8-25.1 Suspension of authority to participate in NJ-EDRS.

27. The State registrar may suspend the authority of a local registrar, deputy registrar, alternate deputy registrar or subregistrar to participate in the NJ-EDRS, and thereby preclude that person from doing burial permitting or death registration, if the State registrar determines that the applicable registration district is insufficiently equipped or provides untimely service with respect to the review and final authentication of records. In that event, the State registrar may assign a local registrar, deputy registrar, alternate deputy registrar or subregistrar from another registration district to substitute for the person in question until such time as the applicable registration district meets the standards established by the State registrar.

C.26:8-21.1 Rules, regulations.

28. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act.

29. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 222

AN ACT concerning the officers of the board of directors of the Educational Opportunity Fund and amending P.L.1968, c.142.

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

1. Section 5 of P.L.1968, c.142 (C.18A:71-32) is amended to read as follows:

C.18A:71-32 Membership.

5. (a) The board of directors of the fund shall consist of the chairman of the Commission on Higher Education and the chairperson of the Board of the Higher Education Student Assistance Authority or their designees from

among the public members and eight citizens of this State appointed by the Governor. Citizen members of the board shall be selected without regard to political affiliation and, as far as may be practicable, on the basis of their knowledge of, or interest in, the problems of needy students and higher education. The board shall organize annually as established by rule of the board to elect a chairman, vice chairman and other officers as the board shall determine from among its members. The officers shall serve for a two-year term and until their successors are elected and qualified. Vacancies in the offices shall be filled in the same manner for the unexpired term only.

(b) Each citizen member of the board shall serve for a term of four years and until his successor shall have been appointed and qualified; provided, that in the case of the first appointments to the board, two members shall be appointed for terms expiring June 30, 1969; two members shall be appointed for terms expiring June 30, 1970; two members shall be appointed for terms expiring June 30, 1971; and two members shall be appointed for terms expiring June 30, 1972. Any vacancy in the membership of the board shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(c) The board shall develop and maintain a Statewide system for the identification of potential college students from needy families; devise methods for recruiting such students; advise the commission on the organization, coordination and support, in cooperation with public and private institutions of higher education of the State, of programs of remedial education for such students; and provide financial assistance as required by such students.

(d) Members of the board shall serve without compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 223

AN ACT concerning pediatric rehabilitation hospitals and amending P.L.2001, c.393.

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

1. Section 2 of P.L.2001, c.393 (C.30:4D-7h) is amended to read as follows:

C.30:4D-7h Reimbursement by State Medicaid program, rates.

2. a. A pediatric rehabilitation hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) with 30 or fewer beds shall be reimbursed 100% of its Medicaid allowable reimbursable costs as defined by Medicare Principles of Reimbursement effective for cost report periods beginning January 1, 2001.

b. A pediatric rehabilitation hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) with more than 30 beds shall be reimbursed a prospective per diem rate by the State Medicaid program for Medicaid fee-for-service recipients.

The initial prospective per diem rate shall be based on the total allowable cost for Medicaid patients divided by the total Medicaid days from the calendar year 1999 Medicare/Medicaid cost report, and shall be considered the base year rate. If the hospital has been in operation less than two full years prior to fiscal year 1999, the prospective per diem rate will be set using its first finalized audited fiscal year 2000 Medicaid/Medicare cost report. The base year rate shall be updated each year by the economic factor specified in N.J.A.C.10:52-5.13.

The Commissioner of Human Services shall adopt regulations to permit a pediatric rehabilitation hospital to seek rate relief or to seek a new base year rate in the event the hospital can demonstrate that it is entitled to rate relief or a new base year pursuant to applicable Medicare Principles of Reimbursement.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 224

AN ACT concerning hazardous discharge site cleanup, and amending and supplementing Title 58 of the Revised Statutes.

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

1. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to read as follows:

C.58:10-23.11g Liability for cleanup and removal costs.

8. a. The fund shall be strictly liable, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages no matter by whom sustained, including but not limited to:

(1) The cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto;

(2) The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

(3) Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge; provided that such loss or impairment exceeds 10% of the amount which claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

(4) Loss of tax revenue by the State or local governments for a period of one year due to damage to real or personal property proximately resulting from a discharge;

(5) Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this act.

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed \$50,000,000.00 for each major facility or \$150.00 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

c. (1) Any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred

by the department or a local unit pursuant to subsection b. of section 7 of P.L. 1976, c. 141 (C.58:10-23.11f).

(2) In addition to the persons liable pursuant to this subsection, in the case of a discharge of a hazardous substance from a vessel into the waters of the State, the owner or operator of a refinery, storage, transfer, or pipeline facility to which the vessel was en route to deliver the hazardous substance who, by contract, agreement, or otherwise, was scheduled to assume ownership of the discharged hazardous substance, and any other person who was so scheduled to assume ownership of the discharged hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs if the owner or operator of the vessel did not have the evidence of financial responsibility required pursuant to section 2 of P.L. 1991, c. 58 (C.58:10-23.11g2).

Where a person is liable for cleanup and removal costs as provided in this paragraph, any expenditures made by the administrator for that cleanup and removal shall constitute a debt of that person to the fund. The debt shall constitute a lien on all property owned by that person when a notice of lien identifying the nature of the discharge and the amount of the cleanup, removal and related costs expended from the fund is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the liable person and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup and removal, shall attach to the revenues and all real and personal property of the liable person, whether or not that person is insolvent.

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the property of an owner or operator of a refinery, storage, transfer, or pipeline facility, the lien on the facility to which the discharged hazardous substance was en route shall have priority over all other claims or liens which are or have been filed against the property. The notice of lien filed pursuant to this paragraph which affects any property of a person liable pursuant to this paragraph other than the property of an owner or operator of a refinery, storage, transfer, or pipeline facility to which the discharged hazardous substance was en route, shall have priority from the day of the filing of the notice of the lien over all claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this paragraph.

To the extent that a person liable pursuant to this paragraph is not otherwise liable pursuant to paragraph (1) of this subsection, or under any other provision of law or under common law, that person may bring an action for indemnifica

tion for costs paid pursuant to this paragraph against any other person who is strictly liable pursuant to paragraph (1) of this subsection.

Nothing in this paragraph shall be construed to extend or negate the right of any person to bring an action for contribution that may exist under P.L.1976, c.141, or any other act or under common law.

(3) In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter liability of any person who acquired real property prior to September 14, 1993.

d. (1) In addition to those defenses provided in this subsection, an act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.

(2) A person, including an owner or operator of a major facility, who owns real property acquired on or after September 14, 1993 on which there has been a discharge, shall not be liable for cleanup and removal costs or for any other damages to the State or to any other person for the discharged hazardous substance pursuant to subsection c. of this section or pursuant to civil common law, if that person can establish by a preponderance of the evidence that subparagraphs (a) through (d) apply, or if applicable, subparagraphs (a) through (e) apply:

(a) the person acquired the real property after the discharge of that hazardous substance at the real property;

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141, or (iii) the person complies with the provisions of subparagraph (e) of paragraph (2) of this subsection;

(c) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor

to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to this section;

(d) the person gave notice of the discharge to the department upon actual discovery of that discharge.

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation, if the preliminary assessment indicates that a site investigation is necessary, as defined in section 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with rules and regulations promulgated by the department defining these terms.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to September 14, 1993; and

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a hazardous substance being discharged on the site and which discharge was discovered at the time of acquisition as a result of the appropriate inquiry, as defined in this paragraph (2), (ii) performed, following the effective date of P.L.1997, c.278, a remediation of the site or discharge consistent with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied upon a valid no further action letter from the department for a remediation performed prior to acquisition, or obtained approval of a remedial action workplan by the department after the effective date of P.L.1997, c.278 and continued to comply with the conditions of that workplan, and (iii) established and maintained all engineering and institutional controls as may be required pursuant to sections 35 and 36 of P.L.1993, c.139. A person who complies with the provisions of this subparagraph by actually performing a remediation of the site or discharge as set forth in (ii) above shall be issued, upon application, a no further action letter by the department. A person who complies with the provisions of this subparagraph either by receipt of a no further action letter from the department following the effective date of P.L.1997, c.278, or by relying on a previously issued no further action letter shall not be liable for any further remediation including any changes in a remediation standard or for the subsequent discovery of a hazardous substance, at the site, or emanating from the site, if the remediation was for the entire site, and the hazardous substance was discharged prior to the person acquiring the property. Notwithstanding any other provisions of this subparagraph, a person who complies with the provisions of this subparagraph only by virtue of the existence of a previously issued no further action letter shall receive no liability protections for any discharge which occurred during the time period

between the issuance of the no further action letter and the property acquisition. Compliance with the provisions of this subparagraph (e) shall not relieve any person of any liability for a discharge that is off the site of the property covered by the no further action letter, for a discharge that occurs at that property after the person acquires the property, for any actions that person negligently takes that aggravates or contributes to a discharge of a hazardous substance, for failure to comply in the future with laws and regulations, or if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of the no further action letter.

(3) Notwithstanding the provisions of paragraph (2) of this subsection to the contrary, if a person who owns real property obtains actual knowledge of a discharge of a hazardous substance at the real property during the period of that person's ownership and subsequently transfers ownership of the property to another person without disclosing that knowledge, the transferor shall be strictly liable for the cleanup and removal costs of the discharge and no defense under this subsection shall be available to that person.

(4) Any federal, State, or local governmental entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the governmental entity involuntarily acquires title by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property, shall not be liable, pursuant to subsection c. of this section or pursuant to common law, to the State or to any other person for any discharge which occurred or began prior to that ownership. This paragraph shall not provide any liability protection to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous substance. This paragraph shall not provide any liability protection to any federal, State, or local government entity that acquires ownership of real property by condemnation or eminent domain where the real property is being remediated in a timely manner at the time of the condemnation or eminent domain action.

(5) A person, including an owner or operator of a major facility, who owns real property acquired prior to September 14, 1993 on which there has been a discharge, shall not be liable for cleanup and removal costs or for any other damages to the State or to any other person for the discharged hazardous substance pursuant to subsection c. of this section or pursuant to civil common law, if that person can establish by a preponderance of the evidence that subparagraphs (a) through (d) apply:

(a) the person acquired the real property after the discharge of that hazardous substance at the real property;

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been

discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

(c) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to this section;

(d) the person gave notice of the discharge to the department upon actual discovery of that discharge.

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (5), the person must have undertaken, at the time of acquisition, all appropriate inquiry on the previous ownership and uses of the property based upon generally accepted good and customary standards.

Nothing in this paragraph (5) shall be construed to alter liability of any person who acquired real property on or after September 14, 1993.

e. Neither the fund nor the Sanitary Landfill Contingency Fund established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be liable for any damages incurred by any person who is relieved from liability pursuant to subsection d. or f. of this section for a remediation that involves the use of engineering controls but the fund and the Sanitary Landfill Contingency Fund shall be liable for any remediation that involves only the use of institutional controls if after a valid no further action letter has been issued the department orders additional remediation except that the fund and the Sanitary Landfill Contingency Fund shall not be liable for any additional remediation that is required to remove an institutional control.

f. Notwithstanding any other provision of this section, a person, who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any cleanup and removal costs or damages, under this section or pursuant to any other statutory or civil common law, to any person, other than the State and the federal government, harmed by any hazardous substance discharged on that property prior to acquisition, and any migration off that property related to that discharge, provided all the conditions of this subsection are met:

(1) the person acquired the real property after the discharge of that hazardous substance at the real property;

(2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor

to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for a discharge pursuant to this section;

(3) the person gave notice of the discharge to the department upon actual discovery of that discharge;

(4) within 30 days after acquisition of the property, the person commenced a remediation of the discharge, including any migration, pursuant to a department oversight document executed prior to acquisition, and the department is satisfied that remediation was completed in a timely and appropriate fashion; and

(5) Within ten days after acquisition of the property, or within 30 days after the expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, the person agrees in writing to provide access to the State for remediation and related activities, as determined by the State.

The provisions of this subsection shall not relieve any person of any liability:

(1) for a discharge that occurs at that property after the person acquired the property;

(2) for any actions that person negligently takes that aggravates or contributes to the harm inflicted upon any person;

(3) if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of a no further action letter or a remedial action workplan and a person is harmed thereby;

(4) for any liability to clean up and remove, pursuant to the department's regulations and directions, any hazardous substances that may have been discharged on the property or that may have migrated therefrom; and

(5) for that person's failure to comply in the future with laws and regulations.

g. Nothing in the amendatory provisions to this section adopted pursuant to P.L.1997, c.278 shall be construed to remove any defense to liability that a person may have had pursuant to subsection e. of this section that existed prior to the effective date of P.L.1997, c.278.

h. Nothing in this section shall limit the requirements of any person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

2. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to read as follows:

C.58:10B-3 Establishment, maintenance of remediation funding source.

25. a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal

costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, or who performs a remediation in an environmental opportunity zone is not required to establish or maintain a remediation funding source. A person who uses an innovative technology or who, in a timely fashion, implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action is not required to establish a remediation funding source for the cost of the remediation involving the innovative technology or permanent remedy. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust, the environmental insurance policy, or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased by the requested amount. The department shall review and respond to the request to decrease the remediation funding source within 45 days of receipt of the request.

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing

the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) an environmental insurance policy, issued by an entity licensed by the Department of Banking and Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or (4) a self-guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7).

c. A remediation trust fund shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the trust agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The remediation trust fund agreement shall conform to a model trust fund agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The trustee shall be an entity which

has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or New Jersey agency.

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section or the department notifies the person that that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail, overnight delivery, or personal service within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.

e. A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail, overnight delivery, or personal service

within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L. 1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the remediation funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

f. A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, in the remediation agreement as provided in subsection e. of section 4 of P.L. 1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application, or in the case of a special purpose entity established specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, a statement of assets and liabilities

certified by a certified public accountant. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12-month period following the date on which the application for self-guarantee is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

g. (1) If the person required to establish the remediation funding source fails to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L. 1983, c.330 (C.13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit or claims upon the environmental insurance policy, as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. 1993, c. 139 (C.58:10B-20).

(2) The transferee of property subject to a remediation conducted pursuant to P.L. 1983, c.330 (C.13:1K-6 et al.), may, at any time after the department's determination of nonperformance by the owner or operator required to establish the remediation funding source, petition the department, in writing, with a copy being sent to the owner and operator, for authority to perform the remediation at the industrial establishment. The department, upon a determination that the transferee is competent to do so, may grant that petition which shall authorize the transferee to perform the remediation as specified in an approved remedial action workplan, or to perform the activities as required in a remediation agreement, and to avail itself of the moneys in the remediation trust fund or line of credit or to make claims upon the environmental insurance policy for these purposes. The petition of the transferee shall not be granted by the department if the owner or operator continues or begins to perform its obligations within 14 days of the petition being filed with the department.

(3) After the department has begun to perform the remediation in the place of the person required to establish the remediation funding source or has granted the petition of the transferee to perform the remediation, the person required to establish the remediation funding source shall not be permitted by the department to continue its performance obligations except upon the agreement of the department or the transferee, as applicable, or except upon a determination by the department that the transferee is not adequately performing the remediation.

3. Section 3 of P.L.1997, c.278 (C.58:10B-21) is amended to read as follows:

C.58:10B-21 Investigation, determination of extent of contamination of aquifers.

3. a. The Department of Environmental Protection shall investigate and determine the extent of contamination of every aquifer in this State. The department shall prioritize its investigations of aquifers giving the highest priority to those aquifers underlying urban or industrial areas that are known or suspected of having large areas of contamination. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an aquifer by the department and upon the department's determination of the extent of contamination of an aquifer, a person performing a remediation may rely upon that information for that person's submission of information to the department in the performance of a remediation.

c. The entire cost of the investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

d. Nothing in this section shall be construed to require or obligate the department to reclassify the groundwater of any aquifer.

e. Any information concerning the contamination of an aquifer that is submitted to the department in digital form by a person performing a remediation, shall be entered into the geographical information system

maintained by the department and shall be made available to the public within 90 days of the receipt of the information by the department.

4. Section 4 of P.L.1997, c.278 (C.58:10B-22) is amended to read as follows:

C.58:10B-22 Investigation, mapping of historic fill areas.

4. a. Within 270 days of the effective date of P.L.2003, c.224, the Department of Environmental Protection shall investigate and map those areas of the State at which large areas of historic fill exist. The department shall prioritize its investigations of historic fill areas giving highest priority to those areas of the State that are known or suspected to contain historic fill. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an area of historic fill by the department and upon the department's determination of the location of historic fill in an area, a person performing a remediation may rely upon that information for that person's performance of a remediation and selection of a remedial action pursuant to subsection h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

c. The entire cost of investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

5. Section 34 of P.L.1997, c.278 (C.58:10B-26) is amended to read as follows:

C.58:10B-26 Definitions relative to redevelopment agreements.

34. As used in sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31):

"Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3).

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the State pursuant to the provisions of section 35 of P.L.1997, c.278 (C.58:10B-27).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"No further action letter" means a written determination by the Department of Environmental Protection that based upon an evaluation of the historical use of a particular site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations.

"Project" or "redevelopment project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within an area of land whereon a contaminated site is located, under a redevelopment agreement with the State pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27).

"Redevelopment agreement" means an agreement between the State and a developer under which the developer agrees to perform any work or undertaking necessary for the remediation of the contaminated site located at the site of the redevelopment project, and for the clearance, development or redevelopment, construction or rehabilitation of any structure or improvement of commercial, industrial or public structures or improvements within an area of land whereon a contaminated site is located pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), and the State agrees that the developer shall be eligible for the reimbursement of up to 75% of the costs of remediation of the contaminated site from the fund established pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30) as authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28).

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

"Remediation costs" means all reasonable costs associated with the remediation of a contaminated site except that "remediation costs" shall not include any costs incurred in financing the remediation.

6. Section 35 of P.L.1997, c.278 (C.58:10B-27) is amended to read as follows:

C.58:10B-27 Terms and conditions of agreements.

35. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer may enter into a redevelopment agreement with the State pursuant to the provisions of this section. The State may not enter into a redevelopment agreement with a developer who is liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the contamination at the site proposed to be in the redevelopment agreement.

The decision whether or not to enter into a redevelopment agreement is solely within the discretion of the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission and the State Treasurer and both must agree to enter into the redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1 et al.) may be construed to compel the Secretary and the State Treasurer to enter into any redevelopment agreement.

The Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, in consultation with the State Treasurer shall negotiate the terms and conditions of any redevelopment agreement on behalf of the State. The redevelopment agreement shall specify the amount of the reimbursement to be awarded the developer, the frequency of payments and the length of time in which that reimbursement shall be granted. In no event shall the amount of the reimbursement, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 75% of the total cost of the remediation.

The Secretary and the State Treasurer may only enter into a redevelopment agreement if they make a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer. This finding may be made by an estimation based upon the professional judgment of the Secretary and the State Treasurer.

The percentage of each payment to be made to the developer pursuant to the redevelopment agreement shall be conditioned on the occupancy rate of the residential dwelling units, buildings, or other work areas located on the property. The redevelopment agreement shall provide for the payments made in order to reimburse the developer to be in the same percentages as

the occupancy rate at the site except that upon the attainment of a 90% occupancy rate, the developer shall be entitled to the entire amount of each payment toward the reimbursement as set forth in the redevelopment agreement. If the redevelopment of the property is performed in phases, then the redevelopment agreement shall provide for the payments to reimburse the developer to commence prior to the completion of the redevelopment at the entire site. The redevelopment agreement shall provide that payments to reimburse the developer be in the same percentages as the occupancy rate of that portion of the site for which the developer has received a no further action letter, and on which new residential construction is completed or a place of business is located, that has generated new tax revenues. The redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate during the payment schedule. If a redevelopment project is completed in phases, where a portion of the property subject to the redevelopment agreement is generating new tax revenues, then the redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate for each phase of the redevelopment.

b. In deciding whether or not to enter into a redevelopment agreement and in negotiating a redevelopment agreement with a developer, the Secretary shall consider the following factors:

- (1) the economic feasibility of the redevelopment project;
- (2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;
- (3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;
- (4) the likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for the remediation costs incurred as provided in the redevelopment agreement;
- (5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;
- (6) the need of the redevelopment agreement to the viability of the redevelopment project; and
- (7) the degree to which the redevelopment project enhances and promotes job creation and economic development.

7. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to read as follows:

C.58:10B-28 Eligibility for reimbursement; certification.

36. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer that enters into a

redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for reimbursement of up to 75% of the costs of the remediation of the subject real property pursuant to the provisions of this section upon the commencement of a business operation, or the completion of the construction of one or more new residences, within a redevelopment project.

b. To be eligible for reimbursement of the costs of remediation, a developer shall submit an application, in writing, to the director for review and certification of the reimbursement. The director shall review the request for the reimbursement upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The director shall also make a finding of the occupancy rate of the property subject to the redevelopment agreement in the frequency set forth in the redevelopment agreement as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).

The director shall certify a developer to be eligible for the reimbursement if the director finds that:

(1) residential construction is complete, or a place of business is located, in the area subject to the redevelopment agreement that has generated new tax revenues;

(2) the developer had entered into a memorandum of agreement, or other oversight document, with the Commissioner of Environmental Protection, after the developer entered into the redevelopment agreement, for the remediation of contamination located on the site of the redevelopment project pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the developer is in compliance with the memorandum of agreement; and

(3) the costs of the remediation were actually and reasonably incurred. In making this finding the director may consult with the Department of Environment Protection.

c. When filing an application for certification for a reimbursement pursuant to this section, the developer shall submit to the director a certification of the total remediation costs incurred by the developer for the remediation of the subject property located at the site of the redevelopment project as provided in the redevelopment agreement, information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, and such other information as the director deems necessary in order to make the certifications and findings pursuant to this section.

8. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to read as follows:

C.58:10B-29 Qualification for certification of reimbursement of remediation costs; memorandum of agreement.

37. a. To qualify for the certification of reimbursement of the remediation costs authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28), a developer shall enter into a memorandum of agreement, or other oversight document with the Commissioner of Environmental Protection for the remediation of the site of the redevelopment project.

b. Under the memorandum of agreement, or other oversight document, the developer shall agree to perform and complete any remediation activity as may be required by the Department of Environmental Protection to ensure the remediation is conducted pursuant to the regulations adopted by the Department of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.).

c. After the developer has entered into a memorandum of agreement, or other oversight document with the Commissioner of Environmental Protection, the commissioner shall submit a copy thereof to the developer, the clerk of the municipality in which the subject property is located, the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, and the director.

9. Section 38 of P.L.1997, c.278 (C.58:10B-30) is amended to read as follows:

C.58:10B-30 Brownfield Site Reimbursement Fund.

38. a. There is created in the Department of the Treasury a special fund to be known as the Brownfield Site Reimbursement Fund. Moneys in the fund shall be dedicated to the purpose of reimbursing a developer who enters into a redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for reimbursement pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). A special account within the fund shall be created for each developer upon approval of a certification pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually appropriate the entire balance of the fund for the purposes of reimbursement of remediation costs as provided in section 39 of P.L.1997, c.278 (C.58:10B-31).

b. The fund shall be credited with an amount from the General Fund, determined sufficient by the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, to provide the negotiated reimbursement to the developer. Moneys credited to the fund shall be an amount that equals the percent of the remediation costs expected to be reimbursed pursuant to the redevelopment agreement. In estimating the amount of new State taxes that is anticipated to be derived from a redevelopment project pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission

and the State Treasurer shall consider taxes from the following: the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), the tax derived from net profits from business, a distributive share of partnership income, or a prorata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., the tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project, or the portion of the fee imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" pursuant to section 4 of P.L.1968, c.49 (C.46:15-8). For the purpose of computing the sales and use tax on the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors and other parties connected with the project, that the tax equals one percent of the developer's contract price for remediation and improvements or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation and improvements.

10. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 225

AN ACT concerning domestic violence and supplementing Title 52 of the Revised Statutes.

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

C.52:27D-43.17a Definitions relative to domestic violence.

1. As used in this act:

"Board" means the Domestic Violence Fatality and Near Fatality Review Board established pursuant to this act.

"Domestic violence-related fatality" or "fatality" means a death which arises as a result of one or more acts of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19).

"Near fatality" means a case in which a victim of domestic violence is in serious or critical condition, as certified by a physician.

"Panel" means the Panel to Study Domestic Violence in the Law Enforcement Community established pursuant to section 9 of this act.

C.52:27D-43.17b Domestic Violence Fatality and Near Fatality Review Board.

2. There is established the Domestic Violence Fatality and Near Fatality Review Board. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the board is established within the Department of Community Affairs, but notwithstanding the establishment, the board shall be independent of any supervision or control by the department or any board or officer thereof.

The purpose of the board is to review the facts and circumstances surrounding domestic violence-related fatalities and near fatalities in New Jersey in order to identify their causes and their relationship to government and nongovernment service delivery systems, and to develop methods of prevention. The board shall: review trends and patterns of fatalities and near fatalities; evaluate the responses of government and nongovernment service delivery systems to fatalities and near fatalities and offer recommendations for improvement of these responses; identify and characterize high-risk groups in order to develop public policy; collect statistical data, in a consistent and uniform manner, on the occurrence of fatalities and near fatalities; and improve collaboration between State and local agencies and organizations for the purpose of developing initiatives to prevent domestic violence.

C.52:27D-43.17c Membership of board, terms, compensation.

3. a. The board shall consist of 21 members as follows:

(1) the Commissioners of Community Affairs, Human Services and Health and Senior Services, the Director of the Division on Women in the Department of Community Affairs, the Attorney General, the Public Defender, the Superintendent of the State Police, the Supervisor of the Office on the Prevention of Violence Against Women in the Department of Community Affairs established pursuant to Executive Order No. 61 (1992), the State Medical

Examiner, the Program Director of the Domestic Violence Fatality Review Board established pursuant to Executive Order No. 110 (2000) and the Executive Director of the New Jersey Task Force on Child Abuse and Neglect, or their designees, who shall serve ex officio;

(2) eight public members appointed by the Governor who shall include a representative of the County Prosecutors Association of New Jersey with expertise in prosecuting domestic violence cases, a representative of the New Jersey Coalition for Battered Women, a representative of a program for battered women that provides intervention services to perpetrators of acts of domestic violence, a representative of the law enforcement community with expertise in the area of domestic violence, a psychologist with expertise in the area of domestic violence or other related fields, a licensed social worker with expertise in the area of domestic violence, a licensed health care professional knowledgeable in the screening and identification of domestic violence cases and a county probation officer; and

(3) two retired judges appointed by the Administrative Director of the Administrative Office of the Courts, one with expertise in family law and one with expertise in municipal law as it relates to domestic violence.

b. The public members of the board shall serve for three-year terms, except that of the public members first appointed, four shall serve for a period of one year, three shall serve for a period of two years and two shall serve for a period of three years. The members shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties and within the limits of funds appropriated for this purpose. Vacancies in the membership of the board shall be filled in the same manner as the original appointments were made.

c. The board shall select a chairperson from among its members who shall be responsible for the coordination of all activities of the board.

d. The board is entitled to call to its assistance and avail itself of the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available for the purposes of reviewing a case pursuant to the provisions of this act.

e. The board may seek the advice of experts, such as persons specializing in the fields of psychiatric and forensic medicine, nursing, psychology, social work, education, law enforcement, family law, academia, military affairs or other related fields, if the facts of a case warrant additional expertise.

C.52:27D-43.17d Duties of board.

4. The board shall:

a. Identify domestic violence-related fatalities that meet the following criteria:

(1) The manner of death is homicide, and the deceased was the spouse, former spouse, present or former household member of the perpetrator of the homicide or person with whom the perpetrator has had a dating relationship;

(2) The manner of death is suicide, and the deceased was a victim of one or more acts of domestic violence committed by a spouse, former spouse, present or former household member or person with whom the victim has had a dating relationship;

(3) The manner of death is homicide or suicide, and the deceased is the perpetrator of a homicide committed against a spouse, former spouse, present or former household member or person with whom the perpetrator has had a dating relationship;

(4) The manner of death is homicide or suicide, and the deceased is the child of either a victim of a homicide committed by a spouse, former spouse, present or former household member or person with whom the victim has had a dating relationship, or the perpetrator of the homicide;

(5) The manner of death is homicide or suicide, and the deceased is the child of a victim of a homicide committed by a spouse, former spouse, present or former household member or person with whom the victim has had a dating relationship and the perpetrator of the homicide;

(6) The deceased is a law enforcement officer, health care professional, representative of any agency or organization that provides services to victims of domestic violence or an emergency medical technician or paramedic who died while responding to an incident of domestic violence;

(7) The manner of death is homicide or suicide, and the deceased is a family member of either a victim of a homicide committed by a spouse, former spouse, present or former household member or person with whom the victim has had a dating relationship, or the perpetrator of the homicide;

(8) The manner of death is homicide or suicide, and the deceased is the perpetrator of a homicide of a family member; or

(9) The manner of death is homicide or suicide related to an incident of domestic violence, and the deceased is not a family member, spouse, former spouse, present or former household member or person with whom the victim has had a dating relationship.

As used in this subsection, "family member" means a person 16 years of age or older related to another person by blood, marriage or adoption, including: a sibling, parent, stepsibling or stepparent of the person or his spouse; and a person whose status is preceded by the words "great" or "grand."

b. Identify near fatalities when information available to the board indicates that domestic violence may have been a contributing factor.

c. Collect and review death certificates, autopsy, investigative, police, medical, counseling, victim service and employment records, child abuse and neglect reports, survivor interviews, surveys, and any other information

the board deems necessary and appropriate in determining the cause of a domestic violence-related fatality or near fatality.

d. Make a determination whether a domestic violence-related fatality or near fatality may have been prevented with improvements to the policies and procedures used by health care, social service, law enforcement, governmental or nongovernmental agencies and organizations to provide services to victims of domestic violence and their families.

e. Implement a Statewide public education campaign to promote awareness among the public, community organizations, law enforcement agencies and health care providers on issues relating to the prevention of domestic violence.

f. Conduct a Statewide domestic violence safety and accountability audit. The audit shall include a systematic analysis of intra agency and interagency policies and procedures used by:

(1) law enforcement agencies and the court system when investigating and prosecuting cases of domestic violence-related fatalities and near fatalities, as appropriate; and

(2) State and local agencies and organizations when providing services to victims of domestic violence.

C.52:27D-43.17e Authority of board.

5. The board is authorized to:

a. Subpoena any records, other than criminal investigatory records pertaining to a criminal investigation in progress, concerning a domestic violence-related fatality or near fatality and other records, which may be deemed pertinent to the review process and necessary for the formulation of a conclusion by the board;

b. Apply for and accept any grant of money from the federal government, private foundations or other sources, which may be available for programs related to the prevention of domestic violence; and

c. Enter into contracts with individuals, organizations and institutions necessary for the performance of its duties under this act.

C.52:27D-43.17f Determination of which incidents receive full review; annual report to Governor, Legislature.

6. a. The board shall determine which domestic violence-related fatalities and near fatalities shall receive its full review.

The board may establish local, community-based teams or committees to compile specific information regarding the fatalities and near fatalities selected by the board for its review.

b. Each team or committee shall include, at a minimum, a person experienced in prosecution and local law enforcement investigation, a medical examiner, a physician with expertise in the area of domestic violence, a domestic violence specialist certified by the New Jersey Association of Domestic

Violence Professionals and one representative each of a legally recognized military organization with expertise in domestic violence and Legal Services of New Jersey to advise on areas relevant to their agencies. As necessary to perform its functions, each team or committee may add additional members if the facts of a case warrant additional expertise.

c. Each team or committee shall submit to the chairperson of the board a report containing the information the team or committee compiled regarding each domestic violence-related fatality or near fatality and make recommendations for improvements or needed changes concerning the provision of services to victims of domestic violence.

d. The board shall review the reports submitted by each team or committee pursuant to subsection c. of this section and issue an annual report to the Governor and the Legislature, which includes the number of cases reviewed and specific non-identifying information regarding cases of particular significance. The board shall also include in the report recommendations for systemwide improvements in services to prevent domestic violence-related fatalities and near fatalities.

C.52:27D-43.17g Accessibility, confidentiality of records.

7. a. The records compiled by the board, including all investigatory findings, statistical data and information gathered pursuant to subsection c. of section 4 of this act, shall not be subject to discovery, but may be used by the chairperson of the board to refer an individual case, including the board's deliberations and conclusions, to the extent necessary, to an appropriate agency to investigate or to provide services.

b. The records compiled by the board shall not be subject to subpoena or admissible as evidence in any action or proceeding in any court, nor shall a person or entity authorized by the board to have access to the records pursuant to this act be compelled to testify with regard to the records.

c. Except as provided in subsection a. of this section, the deliberations and conclusions of the board related to a specific case shall be confidential and shall not be deemed a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.). Summary records that are prepared by the board and the teams or committees on each reported case shall not contain any information that would identify the victim of a domestic violence-related fatality or near fatality.

C.52:27D-43.17h Immunity from civil liability.

8. A member of the board, a member of a team, committee or panel established pursuant to this act or an employee of the board shall not be held liable for any civil damages as a result of any action taken or omitted in the performance of his duties pursuant to this act.

C.52:27D-43.17i Panel to Study Domestic Violence in the Law Enforcement Community.

9. a. The board shall establish a Panel to Study Domestic Violence in the Law Enforcement Community. The purpose of the panel is to: examine issues associated with incidents of domestic violence perpetrated by law enforcement officials and, as appropriate, specific cases; evaluate the responses of State and local agencies and organizations to incidents of domestic violence perpetrated by law enforcement officials; and develop strategies to prevent domestic violence-related fatalities and near fatalities among law enforcement officials and their families.

The panel shall examine issues, which shall include, but are not limited to:

- (1) the education of law enforcement officials on the consequences of committing acts of domestic violence;
- (2) the provision of support services to law enforcement officials in high-risk situations, including cases of separation and divorce;
- (3) the provision of support services to victims of domestic violence who are the family members of law enforcement officials, including information about and referral to community organizations that provide medical, mental health and legal services to victims of domestic violence; and
- (4) the development of Statewide policies and procedures regarding the identification and disposition of cases of domestic violence perpetrated by law enforcement officials.

b. The panel shall be composed of volunteer members, including representatives from the law enforcement community and experts in the field of domestic violence.

c. The members of the panel:

- (1) shall not disclose to any person or government official any identifying information about a specific case of domestic violence perpetrated by a law enforcement official with respect to which the panel is provided information; and
- (2) shall not make public other information unless authorized by State statute.

d. The panel shall have access to information necessary to carry out its functions. The panel is entitled to call to its assistance and avail itself of the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available for the purposes of effectuating the provisions of this act.

e. The panel shall prepare and make available to the public and the board, on an annual basis, a report containing a summary of its activities.

f. The panel may receive grants and other funds made available from any governmental, public, private, nonprofit or for-profit agency, including funds made available under any federal or State law, regulation or program.

C.52:27D-43.17j Regulations.

10. The board shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), concerning the operation of the board, procedures for conducting reviews of cases involving domestic violence fatalities and near fatalities, the establishment of the panel pursuant to section 9 of this act and other matters necessary to effectuate the purposes of this act.

11. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 226

AN ACT concerning the right of way of certain buses and supplementing Title 39 of the Revised Statutes.

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

C.39:4-87.1 Right of way of certain buses reentering traffic.

1. a. The driver of a non-emergency vehicle upon a highway shall yield the right of way to any bus, provided that:

(1) The driver is operating a vehicle that is in a position to overtake the bus from its rear; and

(2) The bus, after exiting an active traffic lane for the purpose of stopping to receive or discharge passengers is attempting to reenter the lane from which it exited and to enter the traffic lane occupied by the driver by signaling its intention to do so. No other lane changes shall be applicable.

As used in this act, "bus" means a bus as defined in section 3 of P.L.1995, c.225 (C.48:4-2.1e), in regular scheduled service, and a motorbus operated in regular route service pursuant to P.L.1979, c.150 (C.27:25 -1 et seq.).

b. The New Jersey Transit Corporation shall conduct a public education program to inform motorists of the requirements imposed by this section relating to bus rights-of-way.

c. The Commissioner of Transportation shall study the need for further action to effectuate the purposes of this 2003 act and shall, no later than 18 months after the effective date of this 2003 act, report to the Governor and the Legislature.

d. This section shall not relieve the driver of any bus from the duty to drive with due regard for the safety of all persons, nor shall it protect the driver from the consequences of his reckless disregard for the safety of others. Nothing in this section shall be construed to limit any immunity or defense otherwise provided by law.

2. This act shall take effect on the first day of the seventh month after enactment.

Approved January 9, 2004.

CHAPTER 227

AN ACT concerning the practice of veterinary medicine and revising various parts of the statutory law.

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

1. R.S.45:16-4 is amended to read as follows:

Meetings; examinations; quorum.

45:16-4. The board shall hold two or more meetings for examinations each year at such time and place as it shall determine, due notice of which shall be made public. At all meetings a majority of the members of the board shall constitute a quorum, but the examination of applicants for a license may be conducted by a committee of one or more veterinary members duly authorized by the board. The board shall examine all diplomas and credentials as to their authenticity. Each applicant for a license shall submit to an examination, to be written, oral, or both, designed to test the examinee's knowledge of any laws, rules and regulations applicable in this State.

2. R.S.45:16-7 is amended to read as follows:

Application for examination; fee; qualifications of applicants.

45:16-7. A person desiring to commence the practice of veterinary medicine, surgery and dentistry in this State shall deliver to the secretary of the board a fee to be determined by the board for filing the application for examination and a fee to be determined by the board for the examination, together with satisfactory proof that the applicant is a qualified veterinary graduate as defined in this act or who shall provide a certification acceptable to the board that the applicant will be awarded a degree in veterinary medicine at graduation during the academic year from the college or university the applicant attends

and has passed a national licensing examination as required by the board. No applicant, however, shall be licensed prior to graduation from a veterinary college or university.

3. Section 6 of P.L.1983, c.98 (C.45:16-7.2) is amended to read as follows:

C.45:16-7.2 Conditions for waiver of portions of examination.

6. a. The board may waive all but the law portion of the examination of, and issue a license to practice veterinary medicine and surgery to, any person who at the time of the application:

(1) Holds a current license in good standing to practice veterinary medicine, surgery and dentistry in another state, U.S. territory, or the District of Columbia, which has education and examination requirements which are substantially equivalent to the requirements of R.S.45:16-1 et seq. for the issuance of a license, or is a board certified specialist in a clinical specialty approved by the board through rules and regulations and recognized by the American Veterinary Medical Association (AVMA); and

(2) Has passed the National Board Examination (NBE) and the Clinical Competency Test (CCT) as prepared under the authority of the National Board of Veterinary Medical Examiners (NBVME), or its predecessor organization, the National Board Examination Committee for Veterinary Medicine (NBEC), or the North American Veterinary Licensing Examination (NAVLE) or any subsequent national licensing examination prepared under the authority of the NBVME or the American Association of Veterinary State Boards (AAVSB), or a substantially equivalent examination, as approved or established by the board, unless at the time the applicant became licensed in another state, U.S. territory, or the District of Columbia, the NBE or CCT, or subsequent examinations prepared under the authority of the NBVME, were not required by this State, in which case the applicant need only have passed whatever national licensing examinations were required of entry level licensed veterinarians in this State at that time; and

(3) Has actively practiced clinical veterinary medicine, surgery and dentistry at least three years of the five years preceding application.

b. Applicants who are not graduates of schools of veterinary medicine, surgery and dentistry accredited by the American Veterinary Medical Association (AVMA) shall possess a certificate issued by the Education Commission for Foreign Veterinary Graduates (ECFVG), or who are qualified under any other training program approved by the board unless at the time these applicants became licensed in another state, U.S. territory or the District of Columbia, the ECFVG certificate was not required by this State.

c. Applicants who are not in good standing, as determined by the board, may apply for licensure as provided in this section, but in order to be so licensed shall provide to the satisfaction of the board that they are qualified for licensure

in New Jersey. In approving licensure applications submitted in accordance with the provisions of this subsection, the board may either place limits on an applicant's license or establish conditions of probation prior to the issuance of a license, or both.

No person shall seek licensure under this section sooner than three years after failure to be licensed under any other section of P.L.1952, c.198 (C.45:16-9.1 et al.).

4. Section 4 of P.L.1952, c.198 (C.45:16-9.4) is amended to read as follows:

C.45:16-9.4 Issuance of certificate of registration; renewal; suspension.

4. Every person licensed to practice veterinary medicine, surgery and dentistry shall procure a certificate of registration which shall be issued upon the payment of a fee determined by the board for a two-year period. A registrant not practicing in this State may apply for an inactive registration and shall pay a fee determined by the board. An inactive registrant shall not practice veterinary medicine, surgery or dentistry in this State. The secretary shall mail to each person licensed to practice veterinary medicine, surgery and dentistry at least 30 days prior to the deadline for registration a printed blank form to be properly filled in and returned to the secretary by such licensed person on or before the deadline for registration, together with such fee. In addition to information about the registrant, the board shall require each licensee to provide the following information on the application or renewal application form: the name, address and telephone number of each veterinary facility in which the registrant will practice 500 or more hours per year; the type of practice; the legal organization of the practice and that entity's name, address and telephone number, if different from the facility address and telephone number; and the name of the principals for that entity. Upon the receipt of the form properly filled in, and such fee, the certificate of registration shall be issued and transmitted.

A registrant applying for active license renewal shall complete not less than 20 hours of continuing veterinary education, of a type approved by the board, during each two-year license renewal period to be eligible for relicensure. Prior to license renewal each licensee shall submit to the board proof of completion of the required number of hours of continuing education over the prior two-year period. The board may, in its discretion, waive requirements for continuing education for an individual for reasons of hardship, such as illness or disability, retirement of the license or other good cause.

The failure on the part of the licensee to renew his certificate as required shall not deprive such person of the right of renewal. The fee to be paid if the certificate is renewed after the expiration date shall be determined by the board. Notice to the licensee by mail on or before the deadline for registration,

addressed to his last post-office address known to the board, informing him of his failure to have applied for a renewal of his license certificate, shall constitute legal notification of such delinquency by the board.

Applications for renewal of certificates shall be in writing to the board, accompanied by the required fees. The license of any person who fails to procure a renewal of certificate at the time and in the manner required by this section shall be suspended by the board upon notice. Any license so suspended shall be reinstated at any time upon the payment of all past-due registration fees and an additional reinstatement fee determined by the board. The board may require that any applicant for registration who has ceased the practice of veterinary medicine for a period in excess of three years be reexamined by the board and be required to complete additional continuing education requirements as a prerequisite to relicensure by the board. Any person whose license shall have been suspended for such cause shall, during the period of such suspension, be regarded as an unlicensed person and, in case he shall continue or engage in the practice of veterinary medicine, surgery or dentistry during such period, shall be liable to penalties pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.).

Every duly licensed person, before commencing the practice of veterinary medicine, surgery and dentistry in this State, shall, within 30 days of the commencement of such practice, procure the certificate of registration required in this act.

Every person practicing veterinary medicine, surgery and dentistry in this State shall conspicuously display at all times his license and registration certificate for the effective two-year period in his main office. Every person who practices veterinary medicine, surgery and dentistry without having such certificate on display, as herein required, shall be liable to a penalty pursuant to section 12 of P.L.1978, c.73 (C.45:1-25).

Every practitioner of veterinary medicine, surgery and dentistry, licensed under the provisions of R.S.45:16-1 et seq., shall report to the board in writing any change in his place of practice, whether same be his main office or branch office, within 30 days of such change.

5. Section 10 of P.L.1952, c.198 (C.45:16-9.7) is amended to read as follows:

C.45:16-9.7 Qualified veterinary graduates; temporary permit; qualifications.

10. A veterinary practice may employ for each licensed veterinarian in the practice as veterinarians not more than two qualified veterinary graduates who have obtained a temporary permit; provided that the qualified veterinary graduates have met all the requirements of the board as set forth in the practice act. An applicant for such a temporary permit shall be associated with a licensed veterinarian in the practice and his labors shall be limited to the practice of

the licensed veterinarian. Each qualified veterinary graduate shall be under the responsible supervision of a licensed practicing veterinarian. Said applicant shall present himself for examination at the next scheduled examination of the board for which the applicant is eligible. There shall be a fee determined by the board for the aforementioned permit, which fee shall be applied toward the examination fee, but shall be forfeited if the applicant fails to present himself at the next scheduled examination for which the applicant is eligible. If the applicant does not pass the examination, additional permits may be issued but not to exceed three in total. Application for such permit shall be countersigned by the licensed veterinarian with whom the candidate will be associated. A candidate who has failed to appear for an examination or who has failed an examination and who has subsequent thereto failed to renew his permit is disqualified to practice the profession of veterinary medicine, surgery, and dentistry.

A lawfully qualified veterinarian of another state who meets the requirements of this State for licensure may take charge temporarily of the practice of a licensed veterinarian of this State during his absence from such practice, not to exceed 90 days, unless renewed, upon written request to the board for permission to do so and upon payment of a fee as determined by the board. The board shall have the right to suspend or revoke any temporary permit for a violation of R.S.45:16-1 et seq. by either the permittee or licensee-employer; provided that before any such permit shall be suspended or revoked, the accused person shall be afforded a hearing before the board.

A licensed practitioner may also use a veterinarian who is qualified under the provisions of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates or who is qualified under any other training program approved by the board, who shall have obtained a training certificate from the board for this purpose. That person shall be under the responsible supervision of the licensed practitioner.

6. This act shall take effect on the 180th day following enactment, except that the board may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 9, 2004.

CHAPTER 228

AN ACT concerning certain penalties under the "State Uniform Construction Code Act" and amending P.L.1975, c.217.

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

1. Section 20 of P.L.1975, c.217 (C.52:27D-138) is amended to read as follows:

C.52:27D-138 Penalties.

20. a. Any person or corporation, including an officer, director or employee of a corporation, who:

- (1) Violates any of the provisions of this act or rules promulgated hereunder;
- (2) Constructs a structure or building in violation of a condition of a building permit;
- (3) Fails to comply with any order issued by an enforcing agency or the department;

(4) Makes a false or misleading written statement, or omits any required information or statement in any application or request for approval to an enforcing agency or the department;

(5) Knowingly sells or offers for retail sale any item, device or material, the regular and intended use of which would violate any provision of the State Uniform Construction Code;

Shall be subject to a penalty of not more than \$2,000; provided, however, that any penalties in excess of \$500.00 per violation may be levied by an enforcing agency only in accordance with subsection e. below.

Paragraph (5) above does not prohibit the retail sale or offering for retail sale of any item, device or material which has more than one regular and intended use, if one of those uses does not violate the code, provided that the item, device or material is not publicly advertised or otherwise promoted by the seller or manufacturer as suitable for a use that would violate any provisions of the code.

b. Anyone who knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to this act or who unreasonably interferes with such an inspection shall be subject to a fine of not more than \$250.00.

c. With respect to subsection a. (3) of this section, a person shall be guilty of a separate offense for each day that he fails to comply with a stop construction order validly issued by an enforcing agency or the department and for each week that he fails to comply with any other order validly issued by an enforcing agency or the department. With respect to subsections a. (1) and a. (4) of this section, a person shall be guilty of a separate offense for each violation of any provision of this act or rules promulgated hereunder and for each false or misleading written statement or omission of required information or statement made in any application or request for approval to an enforcing agency or

the department. With respect to subsection a. (2) of the section, a person shall be guilty of a separate offense for each violation of the conditions of a construction permit.

d. The penalties pursuant to this section may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.). Jurisdiction to enforce such penalties is hereby conferred upon judges of the municipal court, in addition to the courts specified by N.J.S.2A:58-2. Suit may be brought by a municipality or the State of New Jersey. Payment of a money judgment pursuant hereto shall be remitted, in the case of a suit brought by a municipality, to the municipal treasurer and in the case of a suit brought by the State of New Jersey, to the State Treasurer.

e. Penalties in excess of \$500.00 per violation may be levied by an enforcing agency only as follows:

(1) A penalty for failure or refusal to comply with any lawful order shall not exceed \$1,000.00 per violation, unless the failure or refusal to comply is done with the knowledge that it will endanger the life or safety of any person, in which case the penalty shall not exceed \$2,000.00 per violation;

(2) A penalty for failure to obtain a required permit prior to commencing construction or for allowing a building to be occupied without a certificate of occupancy shall not exceed \$2,000.00 per violation;

(3) A penalty for failure to comply with a stop construction order shall not exceed \$2,000.00 per violation;

(4) A penalty for willfully making a false or misleading written statement, or willfully omitting any required information or statement in any application or request for approval, shall not exceed \$2,000.00 per violation;

For purposes of this subsection, in an occupied building, only a code violation involving fire safety, structural soundness or the malfunctioning of mechanical equipment that would pose a life safety hazard shall be deemed to endanger the life or safety of a person. In an unoccupied building only a code violation of a requirement intended to protect members of the public who are walking by the property shall be deemed to endanger the life or safety of a person.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 229

AN ACT upgrading crime of luring or enticing a child and amending P.L. 1993, c.291.

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

1. Section 1 of P.L.1993, c.291 (C.2C:13-6) is amended to read as follows:

C.2C:13-6 Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment.

1. Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment.

A person commits a crime of the second degree if he attempts, via electronic or any other means, to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

"Child" as used in this act means a person less than 18 years old.

"Electronic means" as used in this section includes, but is not limited to, the Internet, which shall have the meaning set forth in N.J.S.2C:24-4.

"Structure" as used in this act means any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for attempted kidnapping under the provisions of N.J.S.2C:13-1.

A person convicted of a second or subsequent offense under this section or a person convicted under this section who has previously been convicted of a violation of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4 shall be sentenced to a term of imprisonment. Notwithstanding the provisions of paragraph (2) of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or five years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section.

For the purposes of this section, an offense is considered a second or subsequent offense or a previous conviction of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4, as the case may be, if the actor has at any time been convicted pursuant to this section, or under any similar statute of the United States, this State or any other state for an offense that is

substantially equivalent to this section or substantially equivalent to N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 230

AN ACT concerning the investment of charitable gift annuity reserves and amending N.J.S.17B:17-13.1.

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

1. N.J.S.17B:17-13.1 is amended to read as follows:

Charitable annuities.

17B:17-13.1. a. The commissioner may, in his discretion, issue a special permit to a qualified nonprofit domestic or foreign corporation or association organized without capital stock or not for profit, engaged solely in bona fide charitable, religious, missionary, educational or philanthropic activities and which shall have been in active operation for at least ten years authorizing any such corporation or association to enter into annuity agreements with donors. Before issuing any such special permit the commissioner shall promulgate rules and regulations governing such annuity agreements and permit holders with respect to such annuity agreements. Such rules and regulations shall, in addition to such other provisions as the commissioner may determine to be necessary or desirable to protect the public, provide that each applicant for a special permit shall submit to the commissioner copies of its form of agreements with donors, and a schedule of its maximum annuity rates, which rates shall be so computed, on the basis of the standard valuation law, as to return to the special permit holder, upon the death of the annuitant, a residue at least equal to one-half of the original gift or other consideration for such annuity.

b. Each such special permit holder shall have and maintain segregated assets at least equal to the sum of the reserves on its outstanding agreements calculated in accordance with the provisions of Chapter 19 of this Code, and a surplus of ten per centum of such reserves or the amount of \$100,000, whichever is higher, and such assets shall be segregated as separate and distinct funds, independent of all other funds of such special permit holder and shall

not be applied for the payment of the debts and obligations of the special permit holder other than with respect to annuity agreements. In determining the reserves of any such special permit holder, a deduction shall be made for all or any portion of an annuity risk which is lawfully reinsured by an authorized insurer. Segregated assets herein required to be maintained shall be invested in accordance with the provisions of the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.).

c. Any corporation or association defined in subsection a. hereof which, prior to the effective date of this Code, has entered into annuity agreements shall obtain a special permit as herein provided prior to entering into any new or additional annuity agreements provided, however, that the commissioner shall by regulation allow a period of time, which shall not be more than five years following the effective date of this Code for any such corporation or association to comply with the provisions of subsection b. of this section with respect to any annuity agreement entered into prior to the effective date of this Code. The commissioner, in his discretion may extend such time for a reasonable period.

d. If the commissioner finds that any special permit holder has failed to comply with the requirements of this section or of any rule or regulation of the commissioner issued hereunder, he may by appropriate order, subject to the provisions of the Administrative Procedure Act (P.L.1968, c.410), Chapter 34 of this Code and any rules adopted thereunder suspend or revoke any such special permit and he may take such other action to restrain or enjoin any such violation as may be otherwise provided by law. In addition the commissioner may make such orders as he deems desirable and necessary to afford appropriate financial security to the annuitants. The commissioner may require that special permit holders submit periodically such reports as he may deem desirable or necessary to ascertain compliance with requirements of this section and the commissioner may, whenever he deems it expedient, make or cause to be made an examination of the assets and liabilities and other affairs of any such special permit holder as the same pertains to annuity agreements entered into pursuant to this section. The reasonable expenses of any such examination shall be fixed and determined by the commissioner, and he shall collect them from the special permit holder examined, who shall pay them on presentation of a detailed account of the expenses.

e. No special permit holder shall be deemed an insurer as defined in this Code.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 231

AN ACT concerning unlawful solid waste disposal, amending and supplementing P.L.1970, c.39, and amending P.L.1989, c.118, R.S.40:49-5 and P.L.1950, c.210.

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

1. Section 3 of P.L.1970, c.39 (C.13:1E-3) is amended to read as follows:

C.13:1E-3 Definitions.

3. As used in the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.):

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for source separated recyclable materials or source separated food waste collected by livestock producers approved by the State Department of Agriculture to collect, prepare and feed such wastes to livestock on their own farms.

"Solid waste collection" means the activity related to pick-up and transportation of solid waste from its source or location to a solid waste facility or other destination.

"Disposal" means the storage, treatment, utilization, processing, resource recovery of, or the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water, so that the solid or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Solid waste management" includes all activities related to the collection or disposal of solid waste by any person engaging in any such process.

"Council" means the Advisory Council on Solid Waste Management.

"Department" means the Department of Environmental Protection.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Solid waste facilities" means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by, or on behalf of, any person, public authority or county pursuant to the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and

rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Public authority" means a municipal or county utilities authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); a county improvement authority created pursuant to the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.); a pollution control financing authority created pursuant to the "New Jersey Pollution Control Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.); or any other public body corporate and politic created for solid waste management purposes in any county, pursuant to the provisions of any law.

"Hackensack Meadowlands District" means the area within the jurisdiction of the New Jersey Meadowlands Commission created pursuant to the provisions of the "Hackensack Meadowlands Reclamation and Development Act," P.L.1968, c.404 (C.13:17-1 et seq.).

"Hackensack Commission" means the New Jersey Meadowlands Commission created pursuant to the provisions of the "Hackensack Meadowlands Reclamation and Development Act," P.L.1968, c.404 (C.13:17-1 et seq.).

"Public sewage treatment plant" means any structure or structures required to be approved by the department pursuant to P.L.1977, c.224 (C.58:12A-1 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.), by means of which domestic wastes are subjected to any artificial process in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this State, before the discharge of the plant effluent into any of the waters of this State; this definition includes plants for the treatment of industrial wastes, as well as a combination of domestic and industrial wastes.

"Resource recovery" means the collection, separation, recycling and recovery of metals, glass, paper and other materials for reuse; or the incineration of solid waste for energy production and the recovery of metals and other materials for reuse.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility.

"Sanitary landfill facility" means a solid waste facility at which solid waste is deposited on or in the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste.

"Transfer station" means a solid waste facility at which solid waste is transferred from a solid waste collection vehicle to a registered solid waste haulage vehicle, including a rail car, for transportation to an offsite sanitary

landfill facility, resource recovery facility, or designated out-of-State disposal site for disposal.

2. Section 4 of P.L. 1970, c.39 (C.13:1E-4) is amended to read as follows:

C.13:1E-4 Supervision of solid waste collection activities, facilities, disposal operations.

4. The department shall have power to supervise solid waste collection activities, solid waste facilities and solid waste disposal operations, and shall in the exercise of this supervision require the registration of all solid waste collection activities, solid waste facilities and solid waste disposal operations in this State. The department may exempt from the requirement of registration any class of solid waste collection activity, solid waste facility or solid waste disposal operation if the department determines that the exemption is necessitated by the public interest.

b. The department in reviewing the registration statement for a new solid waste collection activity, solid waste facility or disposal operation and in determining the conditions under which it may be approved, shall not approve the registration of any new solid waste collection activity, solid waste facility or disposal operation that does not conform to the district solid waste management plan of the district in which the proposed solid waste collection activity, solid waste facility or disposal operation is to be located, as the relevant district plan shall have been approved by the department as hereinafter provided.

3. Section 5 of P.L. 1970, c.39 (C.13:1E-5) is amended to read as follows:

C.13:1E-5 Registration statement, engineering design; approval.

5. a. No person shall engage in the collection or disposal of solid waste in this State without first filing an application for a registration statement or engineering design approval and obtaining approval thereof from the department. A person seeking to engage in solid waste disposal shall file a separate application for a registration statement and an engineering design approval for each particular solid waste facility.

b. The application for a registration statement or an engineering design approval shall be made on forms provided by the department and shall contain whatever information as may be prescribed by the department. The State and any of its political subdivisions, public agencies and public authorities shall be deemed a person within the meaning of P.L. 1970, c.39 (C.13:1E-1 et seq.).

c. The application for a registration statement or an engineering design approval shall not be approved by the department if the department determines that the solid waste collection activity, solid waste facility or solid waste disposal operation will not meet the standards or criteria set forth in P.L. 1970, c.39 (C.13:1E-1 et seq.) or in rules or regulations as may be adopted pursuant thereto. The department may require the amendment of an approved registration

statement or engineering design approval if the department determines that the continued solid waste collection activity or continued operation of a solid waste facility in accordance with its approved registration would not meet these standards, criteria or regulations.

4. Section 2 of P.L.1989, c.118 (C.13:1E-9.3) is amended to read as follows:

C.13:1E-9.3 Disposal, transportation of solid waste; authorization.

2. a. No person shall, regardless of intent, engage, or be permitted to engage, in the disposal of solid waste in excess of 0.148 cubic yards of solids or 30 United States gallons of liquids, whether for profit or otherwise, except at a solid waste facility or an out-of-State disposal site which has authorization from the appropriate state regulatory agency having jurisdiction over solid waste management to accept solid waste for disposal, or any other place in this State which has authorization from the Department of Environmental Protection to accept solid waste for disposal, as the case may be.

b. No person shall, regardless of intent, transport or cause or permit to be transported any solid waste in excess of 0.148 cubic yards of solids or 30 United States gallons of liquids, whether for profit or otherwise, except to a solid waste facility or an out-of-State disposal site which has authorization from the appropriate state regulatory agency having jurisdiction over solid waste management to accept solid waste for disposal, or to any other place in this State which has authorization from the Department of Environmental Protection to accept solid waste for disposal, as the case may be.

c. No person shall, regardless of intent, cause, engage in or be permitted to engage in, the disposal of any amount of solid waste on real property subject to the use, control or ownership of a railroad company, unless such disposal is expressly authorized by the railroad company and approved by the Department of Environmental Protection.

d. The provisions of this section shall be enforced by the Department of Environmental Protection and by every relevant municipality, local board of health, or county health department, as the case may be.

C.13:1E-9.6 Solid waste disposal offenses, degree of crime, penalties.

5. a. A person is guilty of a crime of the second degree if that person knowingly:

(1) disposes of solid waste, or causes or permits the disposal of solid waste, or otherwise engages in the disposal of solid waste within this State in the amount of 1,000 cubic yards or more of solids or 10,000 United States gallons or more of liquids, whether for profit or otherwise, except at a solid waste facility which has received approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) or any other place in this State which has

authorization from the Department of Environmental Protection to accept solid waste for disposal, as the case may be; or

(2) transports or causes or permits to be transported any solid waste in the amount of 1,000 cubic yards or more of solids or 10,000 United States gallons or more of liquids, whether for profit or otherwise, to a disposal site within this State which does not have approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) to accept solid waste for disposal.

b. A person is guilty of a crime of the third degree if that person:

(1) recklessly disposes of solid waste, or causes or permits the disposal of solid waste, or otherwise engages in the disposal of solid waste within this State in the amount of 100 cubic yards or more of solids or 1,000 United States gallons or more of liquids, whether for profit or otherwise, except at a solid waste facility which has received approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) or any other place in this State which has authorization from the Department of Environmental Protection to accept solid waste for disposal, as the case may be; or

(2) recklessly transports or causes or permits to be transported any solid waste in the amount of 100 cubic yards or more of solids or 1,000 United States gallons or more of liquids, whether for profit or otherwise, to a disposal site within this State which does not have approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) to accept solid waste for disposal; or

(3) knowingly disposes of solid waste, or causes or permits the disposal of solid waste, or otherwise engages in the disposal of solid waste within this State in an amount of at least 10 but less than 100 cubic yards of solids or an amount of at least 250 but less than 1,000 United States gallons of liquids, whether for profit or otherwise, except at a solid waste facility which has received approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) or any other place in this State which has authorization from the Department of Environmental Protection to accept solid waste for disposal, as the case may be; or

(4) knowingly transports or causes or permits to be transported any solid waste in an amount of at least 10 but less than 100 cubic yards of solids or an amount of at least 250 but less than 1,000 United States gallons of liquids, whether for profit or otherwise, to a disposal site within this State which does not have approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) to accept solid waste for disposal .

Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$50,000 may be imposed for a violation of this subsection.

c. A person is guilty of a crime of the fourth degree if that person recklessly:

(1) disposes of solid waste, or causes or permits the disposal of solid waste, or otherwise engages in the disposal of solid waste within this State in an amount of at least 10 but less than 100 cubic yards of solids or an amount of at least 250 but less than 1,000 United States gallons of liquids, whether for profit or otherwise, except at a solid waste facility which has received approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) or any other place in this State which has authorization from the Department of Environmental Protection to accept solid waste for disposal, as the case may be; or

(2) transports or causes or permits to be transported any solid waste in an amount of at least 10 but less than 100 cubic yards of solids or an amount of at least 250 but less than 1,000 United States gallons of liquids, whether for profit or otherwise, to a disposal site within this State which does not have approval from the department pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5) to accept solid waste for disposal.

Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be imposed for a violation of this subsection.

d. A person who knowingly or recklessly engages in the collection of solid waste, whether for profit or otherwise, in violation of the requirements of section 5 of P.L.1970, c.39 (C.13:1E-5), is guilty of an offense.

It is a crime of the third degree if the amount of solid waste collected is in the amount of 100 cubic yards or more of solids or 1,000 United States gallons or more of liquids, and it is a crime of the fourth degree if the amount of solid waste collected is at least 10 but less than 100 cubic yards of solids or at least 250 but less than 1,000 United States gallons of liquids.

e. A prosecution for a violation of the provisions of this section shall be commenced within ten years of the date of discovery of the violation.

f. The quantity of solid waste involved in an offense under this section shall be determined by the trier of fact. The quantity of solid waste involved in offenses committed pursuant to one scheme or course of conduct, whether at one or several locations, may be aggregated in determining the degree of the offense.

6. R.S.40:49-5 is amended to read as follows:

Penalties for violations of municipal ordinances.

40:49-5. The governing body may prescribe penalties for the violation of ordinances it may have authority to pass, by one or more of the following: imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not exceeding \$1,250; or by a period of community service not exceeding 90 days.

The governing body may prescribe that for the violation of any particular ordinance at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100.

The governing body may prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000.

The court before which any person is convicted of violating any ordinance of a municipality shall have power to impose any fine, term of imprisonment, or period of community service not less than the minimum and not exceeding the maximum fixed in such ordinance.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

Any municipality which chooses not to impose an additional fine upon a person for a repeated violation of any municipal ordinance may waive the additional fine by ordinance or resolution.

Any person convicted of the violation of any ordinance may, in the discretion of the court by which he was convicted, and in default of the payment of any fine imposed therefor, be imprisoned in the county jail or place of detention provided by the municipality, for any term not exceeding 90 days, or be required to perform community service for a period not exceeding 90 days.

7. Section 2-4 of P.L.1950, c.210 (C.40:69A-29) is amended to read as follows:

C.40:69A-29 Powers of municipality.

2-4. Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:

(a) Organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their terms, tenure and compensation;

(b) Adopt and enforce local police ordinances of all kinds and impose one or more of the following penalties: fines not exceeding \$1,250 or imprisonment for any term not exceeding 90 days, or a period of community service not exceeding 90 days for the violation thereof; prescribe that for the violation of particular ordinances at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding

\$100; prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000; to construct, acquire, operate or maintain any and all public improvements, projects or enterprises for any public purpose, subject to referendum requirements otherwise imposed by law, and to exercise all powers of local government in such manner as its governing body may determine;

(c) Sue and be sued, to have a corporate seal, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, to appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof;

(d) Exercise powers of condemnation, borrowing and taxation in the manner provided by general law.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

Any municipality which chooses not to impose an additional fine upon a person for a repeated violation of any municipal ordinance may waive the additional fine by ordinance or resolution.

8. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 232

AN ACT concerning animal cruelty and amending various sections of chapter 22 of Title 4 of the Revised Statutes.

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

1. R.S.4:22-17 is amended to read as follows:

Cruelty; disorderly persons offense; certain acts, crimes; degrees.

4:22-17. a. A person who shall:

- (1) Overdrive, overload, drive when overloaded, overwork, deprive of necessary sustenance, abuse, or needlessly kill a living animal or creature;
- (2) Cause or procure any such acts to be done; or
- (3) Inflict unnecessary cruelty upon a living animal or creature, or unnecessarily fail to provide a living animal or creature of which the person has charge either as an owner or otherwise with proper food, drink, shelter or protection from the weather, or leave it unattended in a vehicle under inhumane conditions adverse to the health or welfare of the living animal or creature--

Shall be guilty of a disorderly persons offense, and notwithstanding the provisions of N.J.S.2C:43-3 to the contrary, for every such offense shall be fined not less than \$250 nor more than \$1,000, or be imprisoned for a term of not more than six months, or both, in the discretion of the court. In addition, the court (1) shall impose a term of community service of up to 30 days, and may direct that the term of community service be served in providing assistance to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, or any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or to a municipality's animal control or animal population control program; (2) may require the violator to pay restitution or otherwise reimburse any costs for food, drink, shelter, or veterinary care or treatment, or other costs, incurred by any agency, entity, or organization investigating the violation, including but not limited to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or a local or State governmental entity; and (3) may impose any other appropriate penalties established for a disorderly persons offense pursuant to Title 2C of the New Jersey Statutes.

b. A person who shall purposely, knowingly, or recklessly:

- (1) Torment, torture, maim, hang, poison, unnecessarily or cruelly beat, or needlessly mutilate a living animal or creature; or
- (2) Cause or procure any such acts to be done--

Shall be guilty of a crime of the fourth degree.

If the animal or creature is cruelly killed or dies as a result of a violation of this subsection, or the person has a prior conviction for a violation of this subsection, the person shall be guilty of a crime of the third degree.

For a violation of this subsection, in addition to imposing any other appropriate penalties established for a crime of the third degree or a crime of the fourth degree, as the case may be, pursuant to Title 2C of the New Jersey Statutes, the court shall impose a term of community service of up to 30 days, and may direct that the term of community service be served in providing

assistance to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, or any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or to a municipality's animal control or animal population control program. The court also may require the violator to pay restitution or otherwise reimburse any costs for food, drink, shelter, or veterinary care or treatment, or other costs, incurred by any agency, entity, or organization investigating the violation, including but not limited to the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society for the prevention of cruelty to animals, any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, or to a municipality's animal control or animal population control program.

c. If a juvenile is adjudicated delinquent for an act which, if committed by an adult, would constitute a disorderly persons offense pursuant to subsection a. of this section or a crime of the third degree or crime of the fourth degree pursuant to subsection b. of this section, the court also shall order the juvenile to receive mental health counseling by a licensed psychologist or therapist named by the court for a period of time to be prescribed by the licensed psychologist or therapist.

2. R.S.4:22-23 is amended to read as follows:

Use of bird as target; disorderly persons offense, \$25 fine.

4:22-23. A person who shall:

a. Use a live pigeon, fowl or other bird for the purpose of a target, or to be shot at either for amusement or as a test of skill in marksmanship;

b. Shoot at a bird used as described in subsection a. of this section, or is a party to such shooting; or

c. Lease a building, room, field or premises, or knowingly permit the use thereof for the purpose of such shooting--

Shall be guilty of a disorderly persons offense, and shall, in addition to any penalty assessed therefor, be fined \$25 for each bird shot at or killed in violation of this section.

This section shall not apply to the shooting of game.

3. R.S.4:22-26 is amended to read as follows:

Penalties for various acts constituting cruelty.

4:22-26. A person who shall:

a. (1) Overdrive, overload, drive when overloaded, overwork, deprive of necessary sustenance, abuse, or needlessly kill a living animal or creature, or cause or procure any such acts to be done;

(2) Torment, torture, maim, hang, poison, unnecessarily or cruelly beat, or needlessly mutilate a living animal or creature, or cause or procure any such acts to be done;

(3) Cruelly kill, or cause or procure the cruel killing of, a living animal or creature, or otherwise cause or procure the death of a living animal or creature from commission of any act described in paragraph (2) of this subsection;

b. (Deleted by amendment, P.L.2003, c.232).

c. Inflict unnecessary cruelty upon a living animal or creature, or unnecessarily fail to provide a living animal or creature of which the person has charge either as an owner or otherwise with proper food, drink, shelter or protection from the weather, or leave it unattended in a vehicle under inhumane conditions adverse to the health or welfare of the living animal or creature;

d. Receive or offer for sale a horse that is suffering from abuse or neglect, or which by reason of disability, disease, abuse or lameness, or any other cause, could not be worked, ridden or otherwise used for show, exhibition or recreational purposes, or kept as a domestic pet without violating the provisions of this article;

e. Keep, use, be connected with or interested in the management of, or receive money or other consideration for the admission of a person to, a place kept or used for the purpose of fighting or baiting a living animal or creature;

f. Be present and witness, pay admission to, encourage, aid or assist in an activity enumerated in subsection e. of this section;

g. Permit or suffer a place owned or controlled by him to be used as provided in subsection e. of this section;

h. Carry, or cause to be carried, a living animal or creature in or upon a vehicle or otherwise, in a cruel or inhumane manner;

i. Use a dog or dogs for the purpose of drawing or helping to draw a vehicle for business purposes;

j. Impound or confine or cause to be impounded or confined in a pound or other place a living animal or creature, and shall fail to supply it during such confinement with a sufficient quantity of good and wholesome food and water;

k. Abandon a maimed, sick, infirm or disabled animal or creature to die in a public place;

l. Willfully sell, or offer to sell, use, expose, or cause or permit to be sold or offered for sale, used or exposed, a horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the health or life of human beings or animals, or who shall, when any such disease is beyond recovery, refuse, upon demand, to deprive the animal of life;

m. Own, operate, manage or conduct a roadside stand or market for the sale of merchandise along a public street or highway; or a shopping mall, or a part of the premises thereof; and keep a living animal or creature confined, or allowed to roam in an area whether or not the area is enclosed, on these premises as an exhibit; except that this subsection shall not be applicable to: a pet shop licensed pursuant to P.L. 1941, c. 151 (C.4:19-15.1 et seq.); a person who keeps an animal, in a humane manner, for the purpose of the protection of the premises; or a recognized breeders' association, a 4-H club, an educational agricultural program, an equestrian team, a humane society or other similar charitable or nonprofit organization conducting an exhibition, show or performance;

n. Keep or exhibit a wild animal at a roadside stand or market located along a public street or highway of this State; a gasoline station; or a shopping mall, or a part of the premises thereof;

o. Sell, offer for sale, barter or give away or display live baby chicks, ducklings or other fowl or rabbits, turtles or chameleons which have been dyed or artificially colored or otherwise treated so as to impart to them an artificial color;

p. Use any animal, reptile, or fowl for the purpose of soliciting any alms, collections, contributions, subscriptions, donations, or payment of money except in connection with exhibitions, shows or performances conducted in a bona fide manner by recognized breeders' associations, 4-H clubs or other similar bona fide organizations;

q. Sell or offer for sale, barter, or give away living rabbits, turtles, baby chicks, ducklings or other fowl under two months of age, for use as household or domestic pets;

r. Sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl, or rabbits, turtles or chameleons under two months of age for any purpose not prohibited by subsection q. of this section and who shall fail to provide proper facilities for the care of such animals;

s. Artificially mark sheep or cattle, or cause them to be marked, by cropping or cutting off both ears, cropping or cutting either ear more than one inch from the tip end thereof, or half cropping or cutting both ears or either ear more than one inch from the tip end thereof, or who shall have or keep in the person's possession sheep or cattle, which the person claims to own, marked contrary to this subsection unless they were bought in market or of a stranger;

t. Abandon a domesticated animal;

u. For amusement or gain, cause, allow, or permit the fighting or baiting of a living animal or creature;

v. Own, possess, keep, train, promote, purchase, or knowingly sell a living animal or creature for the purpose of fighting or baiting that animal or creature;

w. Gamble on the outcome of a fight involving a living animal or creature;

x. Knowingly sell or barter or offer for sale or barter, at wholesale or retail, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat, unless such fur or hair for sale or barter is from a commercial grooming establishment or a veterinary office or clinic or is for use for scientific research;

y. Knowingly sell or barter or offer for sale or barter, at wholesale or retail, for human consumption, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat;

z. Surgically debark or silence a dog in violation of section 1 or 2 of P.L.2002, c.102 (C.4:19-38 or C.4:19-39);

aa. Use a live pigeon, fowl or other bird for the purpose of a target, or to be shot at either for amusement or as a test of skill in marksmanship, except that this subsection and subsections bb. and cc. shall not apply to the shooting of game;

bb. Shoot at a bird used as described in subsection aa. of this section, or is a party to such shooting; or

cc. Lease a building, room, field or premises, or knowingly permit the use thereof for the purposes of subsection aa. or bb. of this section --

Shall forfeit and pay a sum according to the following schedule, to be sued for and recovered, with costs, in a civil action by any person in the name of the New Jersey Society for the Prevention of Cruelty to Animals:

For a violation of subsection e., f., g., u., v., w., or z. of this section or of paragraph (3) of subsection a. of this section, or for a second or subsequent violation of paragraph (2) of subsection a. of this section, a sum of up to \$5,000;

For a violation of subsection l. of this section or for a first violation of paragraph (2) of subsection a. of this section, a sum of up to \$3,000;

For a violation of subsection x. or y. of this section, a sum of up to \$1,000 for each domestic dog or cat fur or fur or hair product or domestic dog or cat carcass or meat product;

For a violation of subsection t. of this section, a sum of not less than \$500 nor more than \$1,000, but if the violation occurs on or near a highway, a mandatory sum of \$1,000;

For a violation of subsection c., d., h., j., k., aa., bb., or cc. of this section or of paragraph (1) of subsection a. of this section, a sum of up to \$1,000; and

For a violation of subsection i., m., n., o., p., q., r., or s. of this section, a sum of up to \$500.

4. R.S.4:22-28 is amended to read as follows:

Civil, criminal actions separate.

4:22-28. The indictment of a person under the provisions of this article, or the holding of a person to bail to await the action of a grand jury or court, shall not in any way relieve that person from liability to be sued for the appropriate penalties under R.S.4:22-26.

5. R.S.4:22-29 is amended to read as follows:

Jurisdiction for action for penalty.

4:22-29. The action for the penalty prescribed in R.S.4:22-26 shall be brought:

- a. In the Superior Court; or
- b. In a municipal court of the municipality wherein the defendant resides or where the offense was committed.

6. R.S.4:22-32 is amended to read as follows:

Enforcement and collection of penalties; warrant.

4:22-32. Penalties for violations of R.S.4:22-26 shall be enforced and collected in a summary manner under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A warrant may issue when the defendant is temporarily within the jurisdiction of the court, but not residing therein; or when the defendant is likely to evade judgment by removal therefrom; or when the defendant's name or residence is unknown.

7. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 233

AN ACT prohibiting smoking on school buses and amending N.J.S.2C:33-13.

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

1. N.J.S.2C:33-13 is amended to read as follows:

Smoking in public.

2C:33-13. Smoking in Public. a. Any person who smokes or carries lighted tobacco in or upon any bus or other public conveyance, except group

charter buses, specially marked railroad smoking cars, limousines or livery services, and, when the driver is the only person in the vehicle, autocabs, is a petty disorderly person. For the purposes of this section, "bus" includes school buses and other vehicles owned or contracted for by the governing body, board or individual of a nonpublic school, a public or private college, university, or professional training school, or a board of education of a school district, that are used to transport students to and from school and school-related activities; and the prohibition on smoking or carrying lighted tobacco shall apply even if students are not present in the vehicle.

b. Any person who smokes or carries lighted tobacco in any public place, including but not limited to places of public accommodation, where such smoking is prohibited by municipal ordinance under authority of R.S.40:48-1 and 40:48-2 or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted, is guilty of a petty disorderly persons offense. Notwithstanding the provisions of 2C:43-3, the maximum fine which can be imposed for violation of this section is \$200.

c. The provisions of this section shall supersede any other statute and any rule or regulation adopted pursuant to law.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 234

AN ACT concerning the disbursement of certain funds by title insurance producers in real estate transactions and amending P.L.1997, c.290.

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

1. Section 2 of P.L.1997, c.290 (C.17:46B-10.1) is amended to read as follows:

C.17:46B-10.1 Maintenance of separate record of receipts, disbursements representing proceeds of real estate transactions.

2. a. Every title insurance producer licensed pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.) or P.L.2001, c.210 (C.17:22A-26 et seq.), and every title insurance company shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing or settlement

proceeds of a real estate transaction, which funds shall be deposited in a separate trust or escrow account, and which shall not be commingled with a producer's or company's own funds or with funds held by a producer or company in any other capacity.

b. No title insurance producer or company shall disburse funds representing closing or settlement proceeds of a real estate transaction unless those funds shall have been deposited in a separate trust or escrow account by cash, electronic wire transfer, or certified, cashier's, teller's or bank check, or other collected funds; provided nevertheless, that nothing contained herein shall be construed to prohibit a title insurance producer or company from disbursing against funds deposited in a separate trust or escrow account other than by cash, electronic wire transfer, or certified, cashier's, teller's or bank check, or other collected funds in an amount not to exceed \$1,000. A "bank check" means a negotiable instrument drawn by a state or federally chartered bank, savings bank or savings and loan association on itself or on its account in another state or federally chartered bank, savings bank or savings and loan association doing business in this State. A "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank. A New Jersey licensed attorney's trust account check and a trust or escrow account check from a New Jersey licensed insurance producer shall be considered "collected funds" for the purposes of this section.

c. The Commissioner of Banking and Insurance shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this section.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 235

AN ACT concerning public safety wireless communications and establishing a State Public Safety Interoperable Communications Coordinating Council.

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

C.52:17E-1 Short title.

1. This act shall be known and may be cited as "The Public Safety Interoperable Communications Act."

C.52:17E-2 Findings, determinations, declarations relative to public safety interoperable communications.

2. a. The Legislature finds and determines that:

Public safety communications systems must support a growing set of missions, such as response to weapons of mass destruction and domestic terrorism, requiring coordinated participation from agencies at all levels of government;

Interoperability is the ability of different governmental agencies to communicate across jurisdictions and with each other;

Public safety agencies in New Jersey currently operate on a variety of frequencies and communications systems that are not compatible and do not provide direct communications;

Police, fire and rescue responders at the State, county and municipal levels need the ability to communicate and coordinate with each other in their day-to-day operations, as well as in emergencies, and to communicate and coordinate their emergency response activities with members of the National Guard;

New Jersey is geographically assigned to two Regional Planning Committees established by the Federal Communications Commission, Region 8 for the New York Metropolitan Area and Region 28 for the South Jersey area, which underscores the need for Statewide coordination of communications resources in large-scale disasters.

b. The Legislature declares that:

It is necessary and appropriate to establish a mechanism, which may draw upon federal, State and local resources and expertise, in order to facilitate necessary improvements in the coordination of public safety communications through improved interoperability, which may be accomplished through planning and implementation involving both State and local officials.

C.52:17E-3 State Public Safety Interoperable Communications Coordinating Council.

3. There is established in the Department of Law and Public Safety a State Public Safety Interoperable Communications Coordinating Council, which shall develop a Statewide Wireless Public Safety Interoperable Communications Strategic Plan to address interoperability and the use of digital technology in public safety communications. The council shall coordinate its activities, as appropriate, with the federal Regional Planning Committees to which the State is assigned by the Federal Communications Commission.

C.52:17E-4 Membership of council.

4. The council shall consist of 16 members as follows:

a. The Attorney General, ex officio, or a designated representative;

b. The Superintendent of State Police, ex officio, or a designated representative;

- c. The Commissioner of Transportation, ex officio, or a designated representative;
- d. The Commissioner of Corrections, ex officio, or a designated representative;
- e. The Commissioner of Environmental Protection, ex officio, or a designated representative;
- f. The Commissioner of Health and Senior Services, ex officio, or a designated representative;
- g. The Commissioner of Community Affairs, ex officio, or a designated representative;
- h. The Adjutant General of the Department of Military and Veterans' Affairs, ex officio, or a designated representative;
- i. The President of the Board of Public Utilities, ex officio, or a designated representative; and
- j. Seven members to be appointed by the Attorney General, including a representative of the Office of Information Technology, a representative of the New Jersey Transit Corporation, a representative of the New Jersey State Fire Chiefs' Association or the New Jersey Career Fire Chiefs Association, a representative of the New Jersey State Association of Chiefs of Police, a representative of the Sheriffs' Association of New Jersey, a representative of the Division of Fire Safety in the Department of Community Affairs, and a representative of the emergency medical services community.

C.52:17E-5 Chairperson; compensation; vacancies.

5. The Attorney General or his designee shall act as chairperson of the council. Members of the council shall serve without compensation, except for reimbursement of reasonable expenses incurred in the performance of their duties, within the limits of any funds appropriated or otherwise made available for that purpose. Any vacancy in the membership of the council shall be filled in the same manner as the original appointment.

C.52:17E-6 Development of Statewide strategic plan.

6. The council shall develop a Statewide strategic plan to most effectively provide interoperability and coordinate public safety communications between and among State, county and municipal public safety agencies. The council shall submit the plan to the Governor and the Legislature no later than one year following the original appointment of all members and shall submit recommendations and proposals, as appropriate, to the Regional Planning Committees to which the State is assigned by the Federal Communications Commission.

C.52:17E-7 Spectrum manager.

7. The council shall engage a full-time professional spectrum manager, who shall be responsible for approving all applications for public safety spectrum allocations in the State to ensure that the State fully complies with Federal Communications Commission rules that impact frequency allocation for public safety use.

C.52:17E-8 Provision of administrative staff, support services.

8. Administrative staff and support services shall be provided by the Department of Law and Public Safety. The council shall also be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal law enforcement, fire department, paid or volunteer, rescue squad or other department or agency as it may require. State, county and municipal agencies shall cooperate with council in providing information and other data as may be requested.

9. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 236

AN ACT concerning the posting of private well test results and amending P.L.2001, c.40.

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

1. Section 7 of P.L.2001, c.40 (C.58:12A-32) is amended to read as follows:

C.58:12A-32 Lessor's water testing responsibilities for private wells.

7. Within 18 months after September 14, 2002, and at least once every five years thereafter, the lessor of any real property the potable water supply for which is a private well for which testing of the water is not required pursuant to any other State law, shall test that water supply in the manner established pursuant to P.L.2001, c.40 (C.58:12A-26 et seq.) for at least the parameters required pursuant to sections 3 and 4 of P.L.2001, c.40 (C.58:12A-28 and 29). Within 30 days after receipt of the test results, the lessor shall provide a written copy thereof to each rental unit on the property. The lessor shall also provide a written copy of the most recent test results to a new lessee of a rental unit on the property. In the case of the seasonal use or rental of real

property as "seasonal use or rental" is defined at section 1 of P.L. 1967, c.265 (C.46:8-19), the lessor of such property shall post the test results in a readily visible location inside the seasonal use or rental unit or the lessor shall provide a written copy of the most recent test results to the new lessee of a seasonal use or rental unit.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 237

AN ACT concerning the issuance of distinguished service medals and amending N.J.S.38A:15-2.

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

1. N.J.S.38A:15-2 is amended to read as follows:

Distinguished service medals.

38A:15-2. The Governor may present in the name of the State of New Jersey a distinguished service medal of appropriate design, and ribbon to be worn in lieu thereof, to:

a. any member of the organized militia who, while serving in any capacity in the organized militia under orders of the Governor, or while in federal service, shall have been distinguished by especially meritorious service and who has been or may be cited in orders for distinguished service by the Governor or by appropriate federal authority;

b. any resident of the State of New Jersey who was a resident of this State at the time of entry into active military service and (1) who while serving in the organized militia or in federal military service on active duty in time of war or emergency, shall have been distinguished by especially meritorious service and who has been or may be cited in orders for distinguished service by the Governor or by appropriate federal authority or (2) who shall have seen active military service in the Armed Forces of the United States of America in a combat theater of operations during time of war or emergency as attested to by the awarding of an honorable discharge and DD 214 or WD 53 by the respective Armed Force;

c. any deceased person who, on the date of induction into the organized militia or federal military service, was a resident of this State and (1) who,

while serving in the organized militia or in federal military service on active duty in time of war or emergency, shall have been distinguished by especially meritorious service and who has been or may be cited in orders for distinguished service by the Governor or appropriate federal authority or (2) who shall have seen active military service in the Armed Forces of the United States of America in a combat theater of operations during time of war or emergency as attested to by the awarding of an honorable discharge and DD 214 or WD 53 by the respective Armed Force or who, having seen such service, died while on active duty as evidenced by DD 1300; or

d. any person who, on the date of induction into the organized militia or federal military service, was a resident of this State and who, while serving in the organized militia or in federal military service on active duty in time of war or emergency, shall have been officially listed as a prisoner of war or missing in action by the United States Department of Defense.

The service medal for a deceased person or a person absent as a prisoner of war or missing in action shall be issued to the parent, spouse, sibling or other relative who submits all of the required forms and documentation on behalf of that person.

2. This act shall take effect immediately.

Approved January 9, 2004.

CHAPTER 238

AN ACT appropriating moneys from the "Garden State Green Acres Preservation Trust Fund," and appropriating and reappropriating certain other moneys, to assist local government units to acquire or develop lands for recreation and conservation purposes.

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

1. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$16,070,000 to provide grants or loans, or both, to assist local government units to develop lands for recreation and conservation purposes. The following projects to develop lands for recreation and conservation purposes located in municipalities eligible to receive State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.),

either as of June 30, 2003 or the effective date of this act, are eligible for funding with the moneys appropriated pursuant to this subsection:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Lodi Boro	Bergen	Memorial Park Dev	\$515,000
Camden County	Camden	Cooper River Boathouse Dev (Pennsauken Twp)	800,000
Gloucester Twp	Camden	Hickstown Road Dev	200,000
Pennsauken Twp	Camden	Cooper River Boathouse Dev	800,000
Vineland City	Cumberland	Multi Park Development Project Dev	600,000
Essex County	Essex	Multi Parks Improvements Dev (Bloomfield Twp, East Orange City, Irvington Twp, Newark City, Orange City Twp, & Verona Twp)	1,000,000
East Orange City	Essex	Multi Parks Redevelopment Dev	800,000
Glassboro Boro	Gloucester	Multi Park Improvements Dev	590,000
Hoboken City	Hudson	Multi Parks Dev	200,000
Jersey City	Hudson	Montgomery Gateway Dev	510,000
Jersey City	Hudson	Myrtle Ave Park Dev	490,000
North Bergen Twp	Hudson	Bruin Stadium Improvements Dev	240,000
Union City	Hudson	47th Street Pool Improvements Dev	500,000
Union City	Hudson	Park Avenue Playground Dev	500,000
Weehawken Twp	Hudson	Pier B Restoration Dev	800,000
West New York Town	Hudson	Pier 8 Park Dev	800,000
Trenton City	Mercer	Cadwalader Park Dev	800,000
Carteret Boro	Middlesex	Arthur Kill Waterfront Phase II Dev	200,000
Perth Amboy City	Middlesex	Shoreline Improvement Project Dev	800,000
Perth Amboy City	Middlesex	Truxton & Columbus Circle Parks Dev	200,000
Asbury Park City	Monmouth	West Side Rec Area Dev	800,000
Keansburg Boro	Monmouth	Shore Blvd Recreation Field Dev	433,000
Long Branch City	Monmouth	Urban Parks Dev 2	200,000
Brick Twp	Ocean	Drum Point Rec Complex II Dev	800,000
Clifton City	Passaic	Athenia Steel Rec Complex Dev	600,000

Passaic City	Passaic	Pulaski Park Restoration Project Dev	42,000
Paterson City	Passaic	Great Falls & Pocket Parks Phase 1 Dev	800,000
Elizabeth City	Union	Elmora Racquet Club Improvements Dev	800,000
Plainfield City	Union	Multi Park Improvements Dev	<u>250,000</u>
TOTAL			<u>\$16,070,000</u>

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or section 2, 3, 4, or 5 of this act, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

d. For the purposes of this section, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

2. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$6,752,000 to provide grants or loans, or both, to assist local government units to develop lands for recreation and conservation purposes. The following projects to develop lands for recreation and conservation purposes, located in densely or highly populated municipalities or sponsored by densely populated counties or highly populated counties, are eligible for funding with the moneys appropriated pursuant to this subsection:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Fort Lee Boro	Bergen	Fort Lee Recreational Redev	\$600,000
Maywood Boro	Bergen	Thoma Avenue Little League Field Dev	375,000
Essex County	Essex	Cons & Natural Resource Center Dev (Roseland Boro)	800,000
South Orange Village Twp	Essex	Baird Basketball Court Renovations Dev	183,000
Washington Twp	Gloucester	Washington Lake Park Enhancement Dev	205,000
Hudson County	Hudson	Laurel Hill Park Dev (Secaucus Town)	1,200,000
Harrison Town	Hudson	Waterfront Walkway Dev	600,000
Mercer County	Mercer	Baldpate Mountain Dev (Hopewell Twp)	1,000,000
Highland Park Boro	Middlesex	River Rd Environmental Ed Center Dev	189,000
Sayreville Boro	Middlesex	River Road Waterfront Park Dev	600,000
Keyport Boro	Monmouth	Ralph Pier Replacement Dev	600,000
Middletown Twp	Monmouth	Banfield Park Dev	150,000
Berkeley Twp	Ocean	Veteran's Park Rec Dev	<u>250,000</u>
TOTAL			<u>\$6,752,000</u>

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or section 1, 3, 4, or 5 of this act, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

d. For the purposes of this section:

"Densely or highly populated municipality" means a municipality with a population density of at least 5,000 persons per square mile, or a population of at least 35,000 persons, according to the latest federal decennial census;

"Densely populated county" means a county with a population density of at least 5,000 persons per square mile according to the latest federal decennial census;

"Green Acres bond act" means P.L. 1995, c.204, P.L. 1992, c.88, P.L. 1989, c.183, P.L. 1987, c.265, and P.L. 1983, c.354; and

"Highly populated county" means a county with a population density of at least 1,000 persons per square mile according to the latest federal decennial census.

3. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L. 1999, c.152 (C.13:8C-19), the sum of \$7,566,000 to provide grants or loans, or both, to assist local government units to acquire lands for recreation and conservation purposes. The following projects to acquire lands for recreation and conservation purposes located in municipalities eligible to receive State aid pursuant to P.L. 1978, c.14 (C.52:27D-178 et seq.), either as of June 30, 2003 or the effective date of this act, are eligible for funding with the moneys appropriated pursuant to this subsection:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Garfield City	Bergen	Passaic River Historic Park Acq	\$800,000
Camden City	Camden	New Roosevelt Park Acq	800,000
Gloucester Twp	Camden	Slim's Ranch Acq	800,000
Essex County	Essex	Riverfront Park & Rec Facility Acq (Newark City)	1,200,000
Hoboken City	Hudson	Northwest Quadrant Acq	800,000
Kearny Town	Hudson	Waterfront Acq	766,000
Carteret Boro	Middlesex	Arthur Kill Waterfront Acq	800,000
Old Bridge Twp	Middlesex	Cedar Ridge II Acq	800,000
Long Branch City	Monmouth	Manahasset Creek Acq	<u>800,000</u>
TOTAL			<u>\$7,566,000</u>

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L. 2003, c.239, P.L. 2003, c.240, P.L. 2003, c.241, or section 1, 2, 4, or 5 of this act, shall be eligible to receive additional funding, as determined by the

Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

d. For the purposes of this section, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

4. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$20,644,300 to provide grants or loans, or both, to assist local government units to acquire lands for recreation and conservation purposes. The following projects to acquire lands for recreation and conservation purposes, located in densely or highly populated municipalities or sponsored by densely populated counties or highly populated counties, are eligible for funding with the moneys appropriated pursuant to this subsection:

(1) Planning Incentive Acquisition Projects

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Bergen County	Bergen	Open Space Plan Acq	\$1,000,000
Evesham Twp	Burlington	Planning Incentive Acq	600,000
Mount Laurel Twp	Burlington	Mt Laurel Acq Plan	600,000
Camden County	Camden	Open Space Plan Acq	1,000,000
Cherry Hill Twp	Camden	Planning Incentive Acq	600,000
West Orange Twp	Essex	Open Space Acq	600,000
Mercer County	Mercer	Planning Incentive Acq	1,000,000
Hamilton Twp	Mercer	Open Space Acq	600,000
Middlesex County	Middlesex	Open Space Acq	1,000,000
East Brunswick Twp	Middlesex	Open Space Plan Acq	600,000
Edison Twp	Middlesex	Edison Acq Plan	600,000
North Brunswick Twp	Middlesex	North Brunswick Plan Acq	600,000
South Brunswick Twp	Middlesex	Open Space Acq	600,000
Monmouth County	Monmouth	Planning Incentive Acq	1,000,000
Marlboro Twp	Monmouth	Open Space Acq	600,000
Middletown Twp	Monmouth	Planning Incentive Acq	600,000
Morris County	Morris	Planning Incentive Acq	1,000,000
Parsippany-Troy Hills Twp	Morris	Open Space Acq	600,000
Dover Twp	Ocean	Open Space & Rec Plan Acq	600,000
Jackson Twp	Ocean	Open Space Acq Plan	600,000
Passaic County	Passaic	Open Space Plan Acq	1,000,000
Franklin Twp	Somerset	Open Space Plan Acq	600,000
Hillsborough Twp	Somerset	Hillsborough Land Acq	600,000
Union County	Union	Open Space & Rec Plan Acq	1,200,000
SUBTOTAL			<u>\$17,800,000</u>

(2) Site Specific Incentive Acquisition Projects

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Edgewater Boro	Bergen	Grand Cove Marina Acq	<u>\$600,000</u>
SUBTOTAL			<u>\$600,000</u>

(3) Standard Acquisition Projects

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Bergenfield Boro	Bergen	Cooper Pond Park Addition Acq	\$600,000
Maywood Boro	Bergen	Thoma Avenue Acq	225,000
Ridgefield Park Village	Bergen	McGowan Park Addition Acq	103,000
Hudson County	Hudson	Open Space Acq (Secaucus Town)	285,000
Piscataway Twp	Middlesex	Open Space Acq	600,000
Point Pleasant Boro	Ocean	Canal Park Property Acq	<u>431,300</u>
SUBTOTAL			<u>\$2,244,300</u>
TOTAL			<u>\$20,644,300</u>

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or section 1, 2, 3, or 5 of this act, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

d. For the purposes of this section:

"Densely or highly populated municipality" means a municipality with a population density of at least 5,000 persons per square mile, or a population of at least 35,000 persons, according to the latest federal decennial census;

"Densely populated county" means a county with a population density of at least 5,000 persons per square mile according to the latest federal decennial census;

"Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354; and

"Highly populated county" means a county with a population density of at least 1,000 persons per square mile according to the latest federal decennial census.

5. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$250,000 to purchase and provide playground equipment in municipalities eligible to receive State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), either as of June 30, 2003 or the effective date of this act, under a Community Playgrounds Initiative pilot program to be established by the department. The municipalities selected to receive the playground equipment shall be subject to the approval of the Joint Budget Oversight Committee or its successor.

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the project listed in subsection a. of this section is offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or section 1, 2, 3, or 4 of this act, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

d. For the purposes of this section, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

6. a. There is reappropriated to the Department of Environmental Protection the unexpended balances, due to project withdrawals, cancellations, or cost savings, of the amounts appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund to assist local government units to acquire or develop lands for recreation and conservation purposes, for the purposes of providing:

(1) grants or loans, or both, to assist local government units to acquire or develop lands for recreation and conservation purposes, for projects approved as eligible for such funding pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or sections 1 through 5 of this act; and

(2) additional funding, as determined by the Department of Environmental Protection, to any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes or that receives funding approved pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or sections 1 through 5 of this act, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

b. There is appropriated to the Department of Environmental Protection such sums as may be, or may become available, on or before June 30, 2005, due to interest earnings or loan repayments in any "Green Trust Fund" established pursuant to a Green Acres bond act, for the purpose of providing:

(1) grants or loans, or both, to assist local government units to acquire or develop lands for recreation and conservation purposes, for projects approved as eligible for such funding pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or sections 1 through 5 of this act; and

(2) additional funding, as determined by the Department of Environmental Protection, to any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes or that receives funding approved pursuant to P.L.2003, c.239, P.L.2003, c.240, P.L.2003, c.241, or sections 1 through 5 of this act, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

c. For the purposes of this section, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

7. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 239

AN ACT appropriating moneys from the "Garden State Green Acres Preservation Trust Fund" to assist local government units in northern New Jersey to acquire or develop lands for recreation and conservation purposes.

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

1. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$12,377,500 to provide grants or loans, or both, to assist local government units in northern New Jersey to acquire or develop lands for recreation and conservation purposes. The following projects to acquire or develop lands for recreation and conservation purposes are eligible for funding with the moneys appropriated pursuant to this subsection:

(1) Planning Incentive Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Montvale Boro	Bergen	Park Acq	\$400,000
Ridgewood Village	Bergen	Open Space Project Acq	400,000
Fairfield Twp	Essex	Open Space Acq	400,000
Livingston Twp	Essex	Open Space Acq	400,000
Chatham Boro	Morris	Open Space Acq	400,000
Chester Twp	Morris	Open Space Acq	400,000
Denville Twp	Morris	Open Space Acq	400,000
East Hanover Twp	Morris	East Hanover Twp Pl Acq	400,000
Florham Park Boro	Morris	Open Space Acq	400,000
Hanover Twp	Morris	Open Space Acq	400,000
Jefferson Twp	Morris	Jefferson Acq Plan	400,000
Mendham Boro	Morris	Open Space Program Acq	400,000
Mine Hill Twp	Morris	Open Space Acq	400,000
Montville Twp	Morris	Open Space Acq	400,000
Morris Twp	Morris	Open Space Acq	400,000
Mount Olive Twp	Morris	Mount Olive Greenway Acq	400,000
Pequannock Twp	Morris	Planning Incentive Acq	200,000
Randolph Twp	Morris	Randolph Acq Program	400,000
Roxbury Twp	Morris	Roxbury Open Space Plan Acq	400,000
Bloomingtondale Boro	Passaic	Open Space Master Plan Acq	400,000
Vernon Twp	Sussex	Planning Incentive Acq	400,000
Allamuchy Twp	Warren	Open Space Acq	400,000
Greenwich Twp	Warren	Planning Incentive Acq	<u>400,000</u>
SUBTOTAL			<u>\$9,000,000</u>

(2) Site Specific Incentive Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Woodcliff Lake Boro	Bergen	Woodcliff Lake Historic Park Acq	\$400,000
Pompton Lakes Boro	Passaic	Feinbloom and Sherman Acq	120,000
West Milford Twp	Passaic	Apple Acres Acq	<u>347,500</u>
SUBTOTAL			<u>\$867,500</u>

(3) Standard Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
East Rutherford Boro	Bergen	Veterans Park Extension Acq	\$400,000
Franklin Lakes Boro	Bergen	Woodside Ave Acq	400,000
Ramsey Boro	Bergen	Garrison Pond Park Acq	200,000
Secaucus Town	Hudson	Waterfront Acq	<u>400,000</u>
SUBTOTAL			<u>\$1,400,000</u>

(4) Development Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
East Rutherford Boro	Bergen	Veteran's Park Extension Dev	\$100,000
Roseland Boro	Essex	Athletic Field Dev	250,000
Bloomingtondale Boro	Passaic	Recreation Redevelopment Dev	100,000
Byram Twp	Sussex	C. O. Johnson Park Dev	250,000
Frankford Twp	Sussex	Frankford Twp Park Phase IV Dev	160,000
Lopatcong Twp	Warren	Lopatcong Park Dev	<u>250,000</u>
SUBTOTAL			<u>\$1,110,000</u>
GRAND TOTAL ALL CATEGORIES			<u>\$12,377,500</u>

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations

act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.238, P.L.2003, c.240, or P.L.2003, c.241, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

For the purposes of this subsection, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

2. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 240

AN ACT appropriating moneys from the "Garden State Green Acres Preservation Trust Fund" to assist local government units in central New Jersey to acquire or develop lands for recreation and conservation purposes.

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

1. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$14,663,500 to provide grants or loans, or both, to assist local government units in central New Jersey to acquire or develop lands for recreation and conservation purposes. The following projects to acquire or develop lands for recreation and conservation purposes are eligible for funding with the moneys appropriated pursuant to this subsection:

(1) Planning Incentive Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Hunterdon County	Hunterdon	County Open Space Plan Acq	\$800,000
East Amwell Twp	Hunterdon	Open Space & Rec Plan Acq	400,000
Franklin Twp	Hunterdon	Franklin Open Space Plan Acq	400,000
High Bridge Boro	Hunterdon	Open Space Plan Acq	400,000
Lebanon Twp	Hunterdon	Open Space Plan Acq	400,000
Readington Twp	Hunterdon	Greenway Incentive Plan Acq	400,000
Union Twp	Hunterdon	Open Space Plan Acq	400,000

West Amwell Twp	Hunterdon	Sourlands/Open Space Acq	400,000
East Windsor Twp	Mercer	Open Space Acq	400,000
Hopewell Twp	Mercer	Hopewell Open Space Acq	400,000
Lawrence Twp	Mercer	Open Space Plan Acq	400,000
West Windsor Twp	Mercer	Planning Incentive Acq	400,000
Cranbury Twp	Middlesex	Cranbury Twp Acq	400,000
Monroe Twp	Middlesex	Thompson Park III Acq	400,000
Plainsboro Twp	Middlesex	Plainsboro Acq	400,000
Atlantic Highlands Boro	Monmouth	Open Space Acq	400,000
Holmdel Twp	Monmouth	Planning Incentive Acq	400,000
Manalapan Twp	Monmouth	Planning Incentive Acq	400,000
Shrewsbury Boro	Monmouth	Rec & Open Space Plan Acq	305,000
Upper Freehold Twp	Monmouth	Open Space Acq	400,000
Somerset County	Somerset	County Open Space Acq	800,000
Bernardsville Boro	Somerset	Open Space Acq	400,000
Branchburg Twp	Somerset	Kanach Farm Acq	400,000
Montgomery Twp	Somerset	Open Space Acq	400,000
Peapack-Gladstone Boro	Somerset	Open Space Acq	400,000
Warren Twp	Somerset	Planning Incentive Acq	<u>400,000</u>
SUBTOTAL			<u>\$11,105,000</u>

(2) Site Specific Incentive Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Manasquan Boro	Monmouth	Manasquan Boro Land Acq	<u>\$400,000</u>
SUBTOTAL			<u>\$400,000</u>

(3) Standard Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Stockton Boro	Hunterdon	Open Space Acq	\$400,000
Hazlet Twp	Monmouth	Union Ave Acq	<u>176,000</u>
SUBTOTAL			<u>\$576,000</u>

(4) Development Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Lambertville City	Hunterdon	Ely Memorial Park Dev	\$250,000
Princeton Twp	Mercer	Coventry Farm Park Dev	100,000
Princeton Twp	Mercer	Greenway Meadow Park Dev	400,000
Freehold Twp	Monmouth	Opatut Park Dev	400,000
Holmdel Twp	Monmouth	Phillips/Veterans Park Dev	100,000

Matawan Boro	Monmouth	Multi Parks Dev	400,000
Oceanport Boro	Monmouth	Multi Parks Improvement Dev	282,500
Rumson Boro	Monmouth	Riverside Park Dev	250,000
Bedminster Twp	Somerset	Multi Parks Dev	250,000
Cranford Twp	Union	Canoe Club & Park Improvements Dev	<u>150,000</u>

SUBTOTAL **\$2,582,500**

GRAND TOTAL ALL CATEGORIES **\$14,663,500**

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.238, P.L.2003, c.239, or P.L.2003, c.241, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

For the purposes of this subsection, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

2. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 241

AN ACT appropriating moneys from the "Garden State Green Acres Preservation Trust Fund" to assist local government units in southern New Jersey to acquire or develop lands for recreation and conservation purposes.

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

1. a. There is appropriated to the Department of Environmental Protection from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), the sum of \$16,042,000

to provide grants or loans, or both, to assist local government units in southern New Jersey to acquire or develop lands for recreation and conservation purposes. The following projects to acquire or develop lands for recreation and conservation purposes are eligible for funding with the moneys appropriated pursuant to this subsection:

(1) Planning Incentive Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Atlantic County	Atlantic	Open Space Acq	\$800,000
Burlington County	Burlington	Planning Incentive Acq	800,000
Bordentown Twp	Burlington	Open Space Acq	400,000
Eastampton Twp	Burlington	Planning Incentive Acq	400,000
Lumberton Twp	Burlington	Open Space Acq	400,000
Moorestown Twp	Burlington	Open Space Preservation Plan Acq	400,000
Westhampton Twp	Burlington	Planning Incentive Acq	400,000
Voorhees Twp	Camden	Planning Incentive Acq	400,000
Gloucester County	Gloucester	Open Space Plan Acq	800,000
East Greenwich Twp	Gloucester	Open Space & Rec Plan Acq	400,000
Franklin Twp	Gloucester	Planning Incentive Acq	400,000
Ocean County	Ocean	Planning Incentive Grant Acq	800,000
Little Egg Harbor Twp	Ocean	Planning Incentive Acq	400,000
Ocean Twp	Ocean	Planning Incentive Acq	400,000
Stafford Twp	Ocean	Planning Incentive Program Acq	400,000
SUBTOTAL			<u>\$7,600,000</u>

(2) Site Specific Incentive Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Chesterfield Twp	Burlington	Recreation Fields Acq	\$400,000
Cape May City	Cape May	Cape May City Open Space Acq	<u>400,000</u>
SUBTOTAL			<u>\$800,000</u>

(3) Standard Acquisition Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Brigantine City	Atlantic	Brigantine Golf Club Acq	\$400,000
Port Republic City	Atlantic	Clarks Mill Pond Acq	400,000
Burlington Twp	Burlington	Tillinghast Property Acq	400,000

Maple Shade Twp	Burlington	Open Space Acq	400,000
Palmyra Boro	Burlington	Legion Field Expansion Acq	400,000
Avalon Boro	Cape May	Beachfront Acq	350,000
Middle Twp	Cape May	Park Acq	400,000
Ocean City	Cape May	Park Acq	400,000
Point Pleasant Beach Boro	Ocean	Zarvos Property Acq	<u>203,000</u>

SUBTOTAL **\$3,353,000**

(4) Development Projects:

LOCAL GOVERNMENT UNIT	COUNTY	PROJECT	APPROVED AMOUNT
Brigantine City	Atlantic	Waterfront Improvements Dev	\$100,000
Buena Vista Twp	Atlantic	Michael Debbi Park Rehab Dev	165,000
Galloway Twp	Atlantic	Patriot Lake Recreation Area Dev	196,000
Hammonton Town	Atlantic	Hammonton Rec Complex Dev	250,000
Mullica Twp	Atlantic	Rec Field Expansion Phase II Dev	250,000
Bordentown Twp	Burlington	Northern Community Park Dev	100,000
Berlin Boro	Camden	Franklin Avenue Field Dev	250,000
Berlin Twp	Camden	Twp Recreational Park Dev	250,000
Somerdale Boro	Camden	Recreation Facility Dev	250,000
Avalon Boro	Cape May	Avalon Recreation Area Dev	150,000
Lower Twp	Cape May	Multi Parks Dev	400,000
Wildwood City	Cape May	Multi Park Improvement - Phase II Dev	164,000
Deptford Twp	Gloucester	Fasola Park Dev	250,000
Logan Twp	Gloucester	Logan Municipal Park Dev	250,000
Island Heights Boro	Ocean	River Ave Boardwalk Improvements Dev	400,000
Pine Beach Boro	Ocean	Admiral Farragut Main Dev	400,000
Point Pleasant Beach Boro	Ocean	Oceanfront Boardwalk Redev	297,000
Seaside Park Boro	Ocean	Bayview Ave Walkway Dev	67,000
Stafford Twp	Ocean	Manahawkin Lake II Dev	<u>100,000</u>

SUBTOTAL **\$4,289,000**

GRAND TOTAL ALL CATEGORIES **\$16,042,000**

b. Any transfer of funds, or change in project sponsor, site, or type, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a local government unit that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation

and conservation purposes, or that receives funding approved pursuant to P.L.2003, c.238, P.L.2003, c.239, or P.L.2003, c.240, shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

For the purposes of this subsection, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354.

2. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 242

AN ACT appropriating moneys from the "Garden State Green Acres Preservation Trust Fund" to provide grants to assist qualifying tax exempt nonprofit organizations to develop lands for recreation and conservation purposes.

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

1. a. (1) There is appropriated from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), to the Department of Environmental Protection the sum of \$400,000 for the purpose of providing grants to assist qualifying tax exempt nonprofit organizations to develop lands for recreation and conservation purposes. The following project is eligible for funding with the moneys appropriated pursuant to this paragraph:

Nonprofit Organization	Project	County	Municipality	Approved Amount
Save Ellis Island, Inc.	Pedestrian Walkway Restoration	Hudson	Jersey City	<u>\$400,000</u>
TOTAL				<u>\$400,000</u>

(2) Any transfer of any funds, or change in project sponsor, site, or type, listed in this subsection shall require the approval of the Joint Budget Oversight Committee or its successor.

b. To the extent that moneys remain available after the project listed in subsection a. of this section is offered funding pursuant thereto, any project

of a qualifying tax exempt nonprofit organization that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor. For the purposes of this subsection, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, and P.L.1989, c.183.

2. This act shall take effect immediately.

Approved January 12, 2003.

CHAPTER 243

AN ACT appropriating \$64,000,000 from the "Garden State Green Acres Preservation Trust Fund," and reappropriating certain other moneys, for the acquisition of lands by the State for recreation and conservation purposes.

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

1. a. There is appropriated from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), to the Department of Environmental Protection the sum of \$64,000,000 for the acquisition of lands by the State for recreation and conservation purposes. This sum shall be allocated as follows:

Project	County	Municipality	Amount
(1) BARNEGAT BAY WATERSHED GREENWAY <i>Barnegat Bay Greenway</i>			\$1,000,000
	Monmouth	Freehold Twp Howell Twp	
	Ocean	Barnegat Twp Berkeley Twp Brick Twp Dover Twp Eagleswood Twp Jackson Twp Lacey Twp Lakewood Twp Little Egg Harbor Twp	

		Ocean Twp Stafford Twp	1,000,000
(2)	CAPE MAY PENINSULA <i>Cape May Peninsula</i>		
	Cape May	Cape May City Cape May Point Boro Dennis Twp Lower Twp Middle Twp Sea Isle City Upper Twp West Cape May Boro Woodbine Boro	
(3)	CROSSROADS OF AMERICAN REVOLUTION <i>Princeton Battlefield to Monmouth</i>		2,000,000
	Mercer	East Windsor Twp Hamilton Twp Lawrence Twp Washington Twp West Windsor Twp	
	Middlesex	Cranbury Twp Monroe Twp Plainsboro Twp	
	Monmouth	Allentown Boro Englishtown Boro Freehold Twp Manalapan Twp Marlboro Twp Millstone Twp Roosevelt Boro Upper Freehold Twp	
	<i>Princeton to Morristown</i>		
	Morris	Chester Boro Harding Twp Long Hill Twp Mendham Boro Mendham Twp Morris Twp Morristown Town Randolph Twp	
	Somerset	Bedminster Twp Bernards Twp Bernardsville Boro Bound Brook Boro Branchburg Twp Bridgewater Twp Franklin Twp Hillsborough Twp Manville Boro Montgomery Twp Raritan Boro Somerville Boro Warren Twp	

<i>Washington Crossing to Princeton Battlefield</i>		
	Hunterdon	East Amwell Twp West Amwell Twp
	Mercer	Hopewell Twp Princeton Twp Trenton City
(4)	DELAWARE & RARITAN CANAL GREENWAY	3,000,000
	Hunterdon	Delaware Twp Kingwood Twp Lambertville City Stockton Boro West Amwell Twp
	Mercer	Ewing Twp Hamilton Twp Hopewell Twp Lawrence Twp Princeton Twp Trenton City
	Middlesex	New Brunswick City Plainsboro Twp South Brunswick Twp
	Somerset	Franklin Twp
(5)	DELAWARE BAY WATERSHED GREENWAY	7,000,000
	<i>Alloways Creek Greenway</i>	
	Salem	Alloway Twp Elsinboro Twp Lower Alloways Creek Twp Pilesgrove Twp Quinton Twp Upper Pittsgrove Twp
	<i>Cape May Tributaries</i>	
	Cape May	Dennis Twp Lower Twp Middle Twp Upper Twp
	<i>Cohansey River Greenway</i>	
	Cumberland	Bridgeton City Fairfield Twp Greenwich Twp Hopewell Twp Lawrence Twp Shiloh Boro Upper Deerfield Twp
	Salem	Alloway Twp
	<i>Dividing/Nantuxent/Cedar/Back Creeks Greenway</i>	
	Cumberland	Commercial Twp Downe Twp Fairfield Twp Lawrence Twp
	<i>Maurice River Greenway</i>	
	Atlantic	Buena Boro Buena Vista Twp
	Cape May	Dennis Twp

	Cumberland	Commercial Twp Deerfield Twp Maurice River Twp Millville City Vineland City	
	Gloucester	Clayton Boro Elk Twp Franklin Twp Glassboro Boro Monroe Twp Newfield Boro	
	Salem	Elmer Boro Pittsgrove Twp Upper Pittsgrove Twp	
<i>Salem River/Mannington Greenway</i>	Salem	Carneys Point Twp Elsinboro Twp Mannington Twp Oldmans Twp Pennsville Twp Pilesgrove Twp Upper Pittsgrove Twp Woodstown Boro	
<i>Stow Creek Greenway</i>	Cumberland	Greenwich Twp Stow Creek Twp	
	Salem	Alloway Twp Lower Alloways Creek Twp Quinton Twp	
(6) DELAWARE RIVER WATERSHED GREENWAY			7,500,000
<i>Big Timber Creek</i>	Camden	Clementon Boro Gloucester Twp Lindenwold Boro Pine Hill Boro	
	Gloucester	Deptford Twp Westville Boro	
<i>Cooper River Greenway</i>	Camden	Berlin Twp Camden City Gibbsboro Boro Haddon Twp Lindenwold Boro Voorhees Twp	
<i>Crosswicks Creek Watershed</i>	Burlington	Bordentown City Bordentown Twp Chesterfield Twp Mansfield Twp North Hanover Twp	
	Mercer	Hamilton Twp Trenton City	
	Monmouth	Millstone Twp	

	Ocean	Upper Freehold Twp Jackson Twp Plumsted Twp	
<i>Delaware River Bluffs</i>	Hunterdon	Delaware Twp Frenchtown Boro Kingwood Twp Lambertville City Stockton Boro West Amwell Twp	
	Mercer	Ewing Twp Hopewell Twp	
<i>Oldsman Creek Greenway</i>	Gloucester	Logan Twp South Harrison Twp Woolwich Twp	
	Salem	Oldmans Twp Pilesgrove Twp Upper Pittsgrove Twp	
<i>Raccoon Creek Greenway</i>	Gloucester	Elk Twp Harrison Twp Logan Twp Woolwich Twp	
<i>Rancocas Creek Greenway</i>	Burlington	Cinnaminson Twp Delanco Twp Delran Twp Eastampton Twp Hainesport Twp Lumberton Twp Medford Twp Moorestown Twp Mount Holly Twp Mount Laurel Twp Pemberton Twp Riverside Twp Southampton Twp Springfield Twp Westampton Twp Willingboro Twp	
<i>Woodbury Creek Watershed</i>	Gloucester	National Park Boro West Deptford Twp	
(7) GREAT EGG HARBOR WATERSHED	Atlantic	Corbin City Egg Harbor Twp Estell Manor City Folsom Boro Hamilton Twp Weymouth Twp	500,000
	Camden	Winslow Twp	
	Cape May	Upper Twp	

(8) HARBOR ESTUARY	Gloucester	Franklin Twp Monroe Twp	2,000,000
	Bergen	Carlstadt Boro East Rutherford Boro Emerson Boro Haworth Boro Lyndhurst Twp North Arlington Boro Old Tappan Boro Oradell Boro Ridgefield Boro Ridgefield Park Village River Vale Twp Westwood Boro	
	Hudson	Jersey City Kearny Town North Bergen Twp Secaucus Town	
	Middlesex	Carteret Boro East Brunswick Twp Edison Twp Highland Park Boro Monroe Twp New Brunswick City Old Bridge Twp Perth Amboy City Sayreville Boro South Amboy City South River Boro Woodbridge Twp	
	Monmouth	Aberdeen Twp Atlantic Highlands Boro Hazlet Twp Keansburg Boro Keyport Boro Matawan Boro Middletown Twp Ocean Twp Union Beach Boro	
	Union	Clark Twp Linden City Rahway City	
(9) HIGHLANDS GREENWAY			10,000,000
	Bergen	Mahwah Twp Oakland Boro	
	Hunterdon	Alexandria Twp Bethlehem Twp Bloomsbury Boro Califon Boro Clinton Town Clinton Twp Glen Gardner Boro	

	Hampton Boro
	High Bridge Boro
	Holland Twp
	Lebanon Boro
	Lebanon Twp
	Milford Boro
	Tewksbury Twp
	Union Twp
Morris	Boonton Town
	Boonton Twp
	Butler Boro
	Chester Boro
	Chester Twp
	Denville Twp
	Dover Town
	Hanover Twp
	Harding Twp
	Jefferson Twp
	Kinnelon Boro
	Mendham Boro
	Mendham Twp
	Mine Hill Twp
	Montville Twp
	Morris Plains Boro
	Morris Twp
	Morristown Town
	Mount Arlington Boro
	Mount Olive Twp
	Mountain Lakes Boro
	Netcong Boro
	Parsippany-Troy Hills Twp
	Pequannock Twp
	Randolph Twp
	Riverdale Boro
	Rockaway Boro
	Rockaway Twp
	Roxbury Twp
	Victory Gardens Boro
	Washington Twp
	Wharton Boro
Passaic	Bloomington Boro
	Pompton Lakes Boro
	Ringwood Boro
	Wanaque Boro
	West Milford Twp
Somerset	Bernardsville Boro
	Far Hills Boro
	Peapack-Gladstone Boro
Sussex	Byram Twp
	Franklin Boro
	Hamburg Boro
	Hardyston Twp
	Hopatcong Boro

		Ogdensburg Boro Sparta Twp Stanhope Boro Vernon Twp Allamuchy Twp Alpha Boro Belvidere Town Franklin Twp Greenwich Twp Hackettstown Town Harmony Twp Independence Twp Liberty Twp Lopatcong Twp Mansfield Twp Oxford Twp Phillipsburg Town Pohatcong Twp Washington Boro Washington Twp White Twp	
	Warren		
(10) HISTORIC RESOURCES			1,000,000
<i>Allaire State Park</i>	Monmouth	Howell Twp Wall Twp	
<i>Battlefields/Encampments</i>			
<i>Monmouth Battlefield</i>	Middlesex	Edison Twp	
	Monmouth	Freehold Twp Manalapan Twp	
<i>New Bridge Landing</i>	Bergen	New Milford Boro River Edge Boro	
<i>Princeton Battlefield</i>	Mercer	Princeton Twp	
<i>Register Eligible Sites</i>	Cape May Gloucester	Lower Twp East Greenwich Twp Woolwich Twp	
<i>Washington Crossing State Park</i>	Mercer	Ewing Twp Hopewell Twp	
<i>Waterloo Village</i>	Sussex	Byram Twp Stanhope Boro	
(11) NATURAL AREAS			2,000,000
<i>Bill Henry Pond</i>	Atlantic	Egg Harbor Twp	
<i>Budd Lake Bog</i>	Morris	Mount Olive Twp	
<i>Campus Swamp</i>	Camden	Gloucester Twp	

<i>Cheesequake State Park</i>	Middlesex	Old Bridge Twp
<i>Crossley Preserve</i>	Ocean	Berkeley Twp Manchester Twp
<i>Five Acre Pond</i>	Atlantic	Estell Manor City
<i>Great Piece Meadows/ Troy Meadows</i>	Essex	Fairfield Twp Roseland Boro West Caldwell Twp
	Morris	East Hanover Twp Hanover Twp Lincoln Park Boro Montville Twp Parsippany-Troy Hills Twp
<i>Hidden Lake</i>	Passaic	Wayne Twp
<i>High Mountain</i>	Camden	Gloucester Twp
	Passaic	North Haledon Boro Wayne Twp
<i>Limestone Ridge</i>	Warren	Blairstown Twp
<i>Long-A-Coming Branch</i>	Camden	Winslow Twp
<i>Milford Bluffs</i>	Hunterdon	Holland Twp
<i>Mountain Lake Bog</i>	Warren	White Twp
<i>Ogdensburg Fen</i>	Sussex	Ogdensburg Boro
<i>Oswego River Natural Area</i>	Burlington	Washington Twp
<i>Phone-In-Fen</i>	Warren	Hardwick Twp
<i>Ramapo Lake Natural Area</i>	Bergen Passaic	Oakland Boro Ringwood Boro Wanaque Boro
<i>Sourland Mountains</i>	Hunterdon	East Amwell Twp West Amwell Twp
	Mercer Somerset	Hopewell Twp Hillsborough Twp Montgomery Twp
<i>Strawberry Hill</i>	Mercer	Hopewell Twp
<i>Sunfish Pond</i>	Warren	Hardwick Twp
<i>Uttertown Bog</i>	Passaic	West Milford Twp
<i>Wetlands Habitat/ Bog Turtle</i>		

	Sussex	Frankford Twp Wantage Twp	
<i>Whale Pond</i>			
(12) NON-PROFIT CAMPS	Monmouth	Ocean Twp	2,000,000
<i>Youth Camps</i>			
	Bergen Burlington	Mahwah Twp Evesham Twp Medford Twp Tabernacle Twp	
	Hunterdon Monmouth Morris	East Amwell Twp Wall Twp Kinnelon Boro Rockaway Boro	
	Ocean Passaic	Ocean Twp Ringwood Boro West Milford Twp	
	Salem Somerset Sussex	Alloway Twp Franklin Twp Byram Twp Hampton Twp Sandyston Twp Sparta Twp Stillwater Twp Vernon Twp	
	Warren	Wantage Twp Hardwick Twp Independence Twp Mansfield Twp	
(13) PINELANDS			5,000,000
	Atlantic	Brigantine City Buena Boro Buena Vista Twp Corbin City Egg Harbor City Egg Harbor Twp Estell Manor City Folsom Boro Galloway Twp Hamilton Twp Hammonton Town Mullica Twp Port Republic City Weymouth Twp	
	Burlington	Bass River Twp Evesham Twp Medford Lakes Boro Medford Twp New Hanover Twp North Hanover Twp Pemberton Twp Shamong Twp Southampton Twp	

	Springfield Twp	
	Tabernacle Twp	
	Washington Twp	
	Woodland Twp	
	Wrightstown Boro	
Camden	Berlin Boro	
	Berlin Twp	
	Chesilhurst Boro	
	Waterford Twp	
	Winslow Twp	
Cape May	Dennis Twp	
	Middle Twp	
	Upper Twp	
	Woodbine Boro	
Cumberland	Maurice River Twp	
	Vineland City	
Gloucester	Franklin Twp	
	Monroe Twp	
Ocean	Barneгат Twp	
	Beachwood Boro	
	Berkeley Twp	
	Dover Twp	
	Eagleswood Twp	
	Jackson Twp	
	Lacey Twp	
	Lakehurst Boro	
	Little Egg Harbor Twp	
	Manchester Twp	
	Ocean Twp	
	Plumsted Twp	
	South Toms River Boro	
	Stafford Twp	
	Tuckerton Boro	
(14) RARITAN RIVER WATERSHED GREENWAY		6,000,000
Hunterdon	Bethlehem Twp	
	Clinton Twp	
	East Amwell Twp	
	Franklin Twp	
	High Bridge Boro	
	Lebanon Twp	
	Raritan Twp	
	Readington Twp	
	Tewksbury Twp	
	Union Twp	
Middlesex	East Brunswick Twp	
	Milltown Boro	
	New Brunswick City	
	North Brunswick Twp	
	Piscataway Twp	
	South Brunswick Twp	
Morris	Chester Twp	
	Harding Twp	
	Long Hill Twp	

		Roosevelt Boro Spring Lake Boro Spring Lake Heights Boro Upper Freehold Twp Wall Twp Jackson Twp	
<i>Rails to Trails</i>	Ocean		
	Burlington	Burlington City Burlington Twp Chesterfield Twp Mansfield Twp North Hanover Twp Pemberton Boro Pemberton Twp Southampton Twp Springfield Twp Westampton Twp Willingboro Twp	
	Mercer	East Windsor Twp Hightstown Boro Washington Twp West Windsor Twp	
	Ocean Sussex	Plumsted Twp Andover Boro Andover Twp Franklin Boro Green Twp Hamburg Boro Newton Town Ogdensburg Boro Sparta Twp Sussex Boro Vernon Twp	
	Warren	Allamuchy Twp Belvidere Town Franklin Twp Independence Twp Knowlton Twp Liberty Twp Washington Twp White Twp	
<i>Warren County Trail</i>	Warren	Franklin Twp Harmony Twp Lopatcong Twp Mansfield Twp Oxford Twp Phillipsburg Town Washington Twp White Twp	
(17) URBAN PARKS	Bergen Camden	Edgewater Boro Camden City	4,000,000

Essex	Belleville Twp	
	Bloomfield Twp	
	Caldwell Twp Boro	
	East Orange City	
	Glen Ridge Twp Boro	
	Irvington Twp	
	Maplewood Twp	
	Montclair Twp	
	Newark City	
	Nutley Twp	
	Orange City Twp	
	South Orange Village Twp	
	West Orange Twp	
	Hudson	Bayonne City
		East Newark Boro
Guttenberg Town		
Harrison Town		
Hoboken City		
Jersey City		
Kearny Town		
North Bergen Twp		
Union City		
Weehawken Twp		
West New York Town		
Mercer Passaic Union	Trenton City	
	Paterson City	
	Elizabeth City	
	Fanwood Boro	
	Garwood Boro	
	Hillside Twp	
	Linden City	
	Plainfield City	
	Rahway City	
	Roselle Boro	
	Roselle Park Boro	
	Union Twp	
	Winfield Twp	

TOTAL**\$64,000,000**

b. Any transfer of any funds, or change in project site, listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any State project that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes shall be eligible to receive additional funding, as determined by the Department

of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

d. There is reappropriated to the Department of Environmental Protection the unexpended balances, due to project cancellations or cost savings, of the amounts appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for State projects to acquire lands for recreation and conservation purposes, for the purpose of providing additional funding, as determined by the Department of Environmental Protection, to any State project that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

e. For the purposes of this section, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, and P.L.1989, c.183.

2. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 244

AN ACT appropriating \$3,000,000 from the "Garden State Farmland Preservation Trust Fund" for grants to qualifying tax exempt nonprofit organizations for farmland preservation purposes.

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

1. a. There is appropriated to the State Agriculture Development Committee the following sums for the purpose of providing grants to qualifying tax exempt nonprofit organizations listed in subsection b. of this section for up to 50% of the cost of acquisition of development easements on farmland or for up to 50% of the cost of acquisition of fee simple titles to farmland for resale or lease with agricultural deed restrictions approved by the committee:

(1) \$1,900,000 from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L.1999, c.152 (C.13:8C-20); and

(2) \$1,100,000 from the "Garden State Farmland Preservation Trust Fund," made available due to project withdrawals and canceled obligations.

The total expenditure by the State Agriculture Development Committee from the list of eligible projects in subsection b. of this section totaling \$3,175,000 shall not exceed \$3,000,000.

b. The following projects are eligible for funding with the monies appropriated pursuant to subsection a. of this section:

Applicant (Farm)	County	Municipality	Acres (+/-)	Amount of Grant Not to Exceed
The Nature Conservancy (Sim Place)	Burlington	Bass River Twp	3,395	\$1,500,000
The Nature Conservancy (Sourland Mountains)			2,125	1,500,000
Ridge & Valley Conservancy (Glenview Farm)	Hunterdon Somerset Warren	East Amwell Twp Hillsborough Twp Blairstown Twp	40	75,000
Ridge & Valley Conservancy (Dunne Farm)	Warren	White Twp	40	100,000

2. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L. 1999, c. 152 (C.13:8C-1 et seq.), and P.L. 1983, c. 32 (C.4:1C-11 et seq.), as appropriate.

3. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 245

AN ACT designating the highbush blueberry as the New Jersey State Fruit.

WHEREAS, The highbush blueberry is indigenous to New Jersey, where it was first cultivated for commercial production, due to pioneering work by New Jerseyan Elizabeth White and Dr. Frederick Coville, who in the early 1900's dedicated themselves to the study, domestication, and breeding of blueberries at Whitesbog, in Browns Mills, New Jersey; and

WHEREAS, The cultivation of highbush blueberries in New Jersey served as the basis for an entirely new agricultural industry; and

WHEREAS, Blueberries taste good, are good for you, are high in fiber, vitamin C, and antioxidants, are sodium and cholesterol-free, are low in calories and may provide medical and health benefits, including the prevention of cancer and heart disease; and

WHEREAS, Blueberries are appreciated around the world, especially in the area of nutrition and the emerging field of nutraceuticals, where blueberries are known for their health benefits and medicinal properties; and

WHEREAS, New Jersey ranks second in the nation in blueberry cultivation, producing 21 percent of the nation's total, with 38 million pounds grown annually on 8,000 acres, spanning seven counties in central and southern New Jersey; and

WHEREAS, New Jersey is widely recognized as the blueberry capital of the nation, and the highbush blueberry, also known as the "New Jersey blueberry," is the ideal symbol of a delicious, nutritious, and healthful fruit; now, therefore,

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

C.52:9A-9 Highbush blueberry designated State fruit.

1. The highbush blueberry (*Vaccinium corymbosum*) is designated as the New Jersey State Fruit.

2. This act shall take effect immediately.

Approved January 12, 2004.

CHAPTER 246

AN ACT establishing the rights and responsibilities of domestic partners, and revising parts of the statutory law.

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

C.26:8A-1 Short title.

1. This act shall be known and may be cited as the "Domestic Partnership Act."

C.26:8A-2 Findings, declarations relative to domestic partners.

2. The Legislature finds and declares that:

a. There are a significant number of individuals in this State who choose to live together in important personal, emotional and economic committed relationships with another individual;

b. These familial relationships, which are known as domestic partnerships, assist the State by their establishment of a private network of support for the financial, physical and emotional health of their participants;

c. Because of the material and other support that these familial relationships provide to their participants, the Legislature believes that these mutually supportive relationships should be formally recognized by statute, and that certain rights and benefits should be made available to individuals participating in them, including: statutory protection against various forms of discrimination against domestic partners; certain visitation and decision-making rights in a health care setting; and certain tax-related benefits; and, in some cases, health and pension benefits that are provided in the same manner as for spouses;

d. All persons in domestic partnerships should be entitled to certain rights and benefits that are accorded to married couples under the laws of New Jersey, including: statutory protection through the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) against various forms of discrimination based on domestic partnership status, such as employment, housing and credit discrimination; visitation rights for a hospitalized domestic partner and the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from the personal income tax and the transfer inheritance tax on the same basis as a spouse. The need for all persons who are in domestic partnerships, regardless of their sex, to have access to these rights and benefits is paramount in view of their essential relationship to any reasonable conception of basic human dignity and autonomy, and the extent to which they will play an integral role in enabling these persons to enjoy their familial relationships as domestic partners and to cope with adversity when a medical emergency arises that affects a domestic partnership, as was painfully but graphically illustrated on a large scale in the aftermath of the tragic events that befell the people of our State and region on September 11, 2001;

e. The Legislature, however, discerns a clear and rational basis for making certain health and pension benefits available to dependent domestic partners only in the case of domestic partnerships in which both persons are of the same sex and are therefore unable to enter into a marriage with each other that is recognized by New Jersey law, unlike persons of the opposite sex who are in a domestic partnership but have the right to enter into a marriage that is recognized by State law and thereby have access to these health and pension benefits; and

f. Therefore, it is the public policy of this State to hereby establish and define the rights and responsibilities of domestic partners.

C.26:8A-3 Definitions relative to domestic partners.

3. As used in sections 1 through 9 of P.L.2003, c.246 (C.26:8A-1 through C.26:8A-9) and in R.S.26:8-1 et seq.:

"Affidavit of Domestic Partnership" means an affidavit that sets forth each party's name and age, the parties' common mailing address, and a statement that, at the time the affidavit is signed, both parties meet the requirements of this act for entering into a domestic partnership and wish to enter into a domestic partnership with each other.

"Basic living expenses" means the cost of basic food and shelter, and any other cost, including, but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner.

"Certificate of Domestic Partnership" means a certificate that includes: the full names of the domestic partners, a statement that the two individuals are members of a registered domestic partnership recognized by the State of New Jersey, the date that the domestic partnership was entered into, and a statement that the partners are entitled to all the rights, privileges and responsibilities accorded to domestic partners under the law. The certificate shall bear the seal of the State of New Jersey.

"Commissioner" means the Commissioner of Health and Senior Services.

"Domestic partner" or "partner" means a person who is in a relationship that satisfies the definition of a domestic partnership as set forth in this act.

"Have a common residence" means that two persons share the same place to live in this State, or share the same place to live in another jurisdiction when at least one of the persons is a member of a State-administered retirement system, regardless of whether or not: the legal right to possess the place is in both of their names; one or both persons have additional places to live; or one person temporarily leaves the shared place of residence to reside elsewhere, on either a short-term or long-term basis, for reasons that include, but are not limited to, medical care, incarceration, education, a sabbatical or employment, but intends to return to the shared place of residence.

"Jointly responsible" means that each domestic partner agrees to provide for the other partner's basic living expenses if the other partner is unable to provide for himself.

"Notice of Rights and Obligations of Domestic Partners" means a form that advises domestic partners, or persons seeking to become domestic partners, of the procedural requirements for establishing, maintaining, and terminating a domestic partnership, and includes information about the rights and responsibilities of the partners.

C.26:8A-4 Affidavit of Domestic Partnership; establishment, requirements.

4. a. Two persons who desire to become domestic partners and meet the requirements of subsection b. of this section may execute and file an Affidavit of Domestic Partnership with the local registrar upon payment of a fee, in an amount to be determined by the commissioner, which shall be deposited in the General Fund. Each person shall receive a copy of the affidavit marked "filed."

b. A domestic partnership shall be established when all of the following requirements are met:

(1) Both persons have a common residence and are otherwise jointly responsible for each other's common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property, which shall be demonstrated by at least one of the following:

(a) a joint deed, mortgage agreement or lease;

(b) a joint bank account;

(c) designation of one of the persons as a primary beneficiary in the other person's will;

(d) designation of one of the persons as a primary beneficiary in the other person's life insurance policy or retirement plan; or

(e) joint ownership of a motor vehicle;

(2) Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;

(3) Neither person is in a marriage recognized by New Jersey law or a member of another domestic partnership;

(4) Neither person is related to the other by blood or affinity up to and including the fourth degree of consanguinity;

(5) Both persons are of the same sex and therefore unable to enter into a marriage with each other that is recognized by New Jersey law, except that two persons who are each 62 years of age or older and not of the same sex may establish a domestic partnership if they meet the requirements set forth in this section;

(6) Both persons have chosen to share each other's lives in a committed relationship of mutual caring;

(7) Both persons are at least 18 years of age;

(8) Both persons file jointly an Affidavit of Domestic Partnership; and

(9) Neither person has been a partner in a domestic partnership that was terminated less than 180 days prior to the filing of the current Affidavit of Domestic Partnership, except that this prohibition shall not apply if one of the partners died; and, in all cases in which a person registered a prior domestic partnership, the domestic partnership shall have been terminated in accordance with the provisions of section 10 of P.L.2003, c.246 (C.26:8A-10).

c. A person who executes an Affidavit of Domestic Partnership in violation of the provisions of subsection b. of this section shall be liable to a civil penalty in an amount not to exceed \$1,000. The penalty shall be sued for and collected pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.).

C.26:8A-5 Notice of termination of domestic partnerships to third parties; requirements.

5. a. A former domestic partner who has given a copy of the Certificate of Domestic Partnership to any third party to qualify for any benefit or right and whose receipt of that benefit or enjoyment of that right has not otherwise terminated, shall, upon termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated. A third party that suffers a loss as a result of failure by a domestic partner to provide this notice shall be entitled to seek recovery from the partner who was obligated to send the notice for any actual loss resulting thereby.

b. Failure to provide notice to a third party, as required pursuant to this section, shall not delay or prevent the termination of the domestic partnership.

C.26:8A-6 Obligations of domestic partners.

6. a. The obligations that two people have to each other as a result of creating a domestic partnership shall be limited to the provisions of this act, and those provisions shall not diminish any right granted under any other provision of law.

b. Upon the termination of a domestic partnership, the domestic partners, from that time forward, shall incur none of the obligations to each other as domestic partners that are created by this or any other act.

c. A domestic partnership, civil union or reciprocal beneficiary relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the partnership was created, shall be valid in this State.

d. Any health care or social services provider, employer, operator of a place of public accommodation, property owner or administrator, or other individual or entity may treat a person as a member of a domestic partnership, notwithstanding the absence of an Affidavit of Domestic Partnership filed pursuant to this act.

e. Domestic partners may modify the rights and obligations to each other that are granted by this act in any valid contract between themselves, except for the requirements for a domestic partnership as set forth in section 4 of P.L.2003, c.246 (C.26:8A-4).

f. Two adults who have not filed an Affidavit of Domestic Partnership shall be treated as domestic partners in an emergency medical situation for the purposes of allowing one adult to accompany the other adult who is ill or injured while the latter is being transported to a hospital, or to visit the other

adult who is a hospital patient, on the same basis as a member of the latter's immediate family, if both persons, or one of the persons in the event that the other person is legally or medically incapacitated, advise the emergency care provider that the two persons have met the other requirements for establishing a domestic partnership as set forth in section 4 of P.L.2003, c.246 (C.26:8A-4); however, the provisions of this section shall not be construed to permit the two adults to be treated as domestic partners for any other purpose as provided in P.L.2003, c.246 (C.26:8A-1 et al.) prior to their having filed an Affidavit of Domestic Partnership.

g. A domestic partner shall not be liable for the debts of the other partner contracted before establishment of the domestic partnership, or contracted by the other partner in his own name during the domestic partnership. The partner who contracts for the debt in his own name shall be liable to be sued separately in his own name, and any property belonging to that partner shall be liable to satisfy that debt in the same manner as if the partner had not entered into a domestic partnership.

C.26:8A-7 Preparation of forms and notices.

7. a. The commissioner shall cause to be prepared, in such a manner as the commissioner determines appropriate:

(1) blank forms, in quadruplicate, of Affidavits of Domestic Partnership and Certificates of Domestic Partnership corresponding to the requirements of this act; and

(2) copies of the Notice of the Rights and Obligations of Domestic Partners.

b. The commissioner shall ensure that these forms and notices, along with such sections of the laws concerning domestic partnership and explanations thereof as the commissioner may deem useful to persons having duties to recognize domestic partners under those laws, are printed and supplied to each local registrar, and made available to the public upon request.

C.26:8A-8 Duties of local registrar.

8. a. The local registrar shall:

(1) stamp each completed Affidavit of Domestic Partnership received with the date of its receipt and the name of the registration district in which it is filed; and

(2) immediately provide two copies of the stamped Affidavit of Domestic Partnership to the person who files that document.

b. Upon the filing of an Affidavit of Domestic Partnership and payment of the appropriate filing fee, the local registrar shall immediately complete a Certificate of Domestic Partnership with the domestic partners' relevant information and the date that the domestic partnership was established. The local registrar shall then issue to the domestic partners two copies of the

certificate and two copies of the Notice of the Rights and Obligations of Domestic Partners. Copies of the Certificate of Domestic Partnership shall be prepared and recorded in the local registrar's records and with the State registrar.

c. Each local registrar shall, on or before the 10th day of each calendar month, or sooner if requested by the Department of Health and Senior Services, transmit to the State registrar the original of all the Affidavits of Domestic Partnership and Certificates of Domestic Partnership received or prepared by the local registrar for the preceding month.

C.26:8A-9 Duties of State registrar.

9. The State registrar shall cause all Affidavits of Domestic Partnership and Certificates of Domestic Partnership received to be alphabetically indexed by the surname of one of the partners, and shall establish a cross-referencing system to allow the records to be identified by the surname of the second partner. The State registrar shall also cause to be transcribed or otherwise recorded from the certificates any of the vital facts appearing thereon as the commissioner may deem necessary or useful.

C.26:8A-10 Jurisdiction of Superior Court relative to termination of domestic partnerships.

10. a. (1) The Superior Court shall have jurisdiction over all proceedings relating to the termination of a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4), including the division and distribution of jointly held property. The fees for filing an action or proceeding for the termination of a domestic partnership shall be the same as those for filing an action or proceeding for divorce pursuant to N.J.S.22A:2-12.

(2) The termination of a domestic partnership may be adjudged for the following causes:

(a) voluntary sexual intercourse between a person who is in a domestic partnership and an individual other than the person's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3);

(b) willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the parties have ceased to cohabit as domestic partners;

(c) extreme cruelty, which is defined as including any physical or mental cruelty that endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; except that no complaint for termination shall be filed until after three months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;

(d) separation, provided that the domestic partners have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable prospect of reconciliation; and provided

further that, after the 18-month period, there shall be a presumption that there is no reasonable prospect of reconciliation;

(e) voluntarily induced addiction or habituation to any narcotic drug, as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C.24:21-2) or the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., or habitual drunkenness for a period of 12 or more consecutive months subsequent to establishment of the domestic partnership and next preceding the filing of the complaint;

(f) institutionalization for mental illness for a period of 24 or more consecutive months subsequent to establishment of the domestic partnership and next preceding the filing of the complaint; or

(g) imprisonment of the defendant for 18 or more consecutive months after establishment of the domestic partnership, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following the imprisonment.

(3) In all such proceedings, the court shall in no event be required to effect an equitable distribution of property, either real or personal, which was legally and beneficially acquired by both domestic partners or either domestic partner during the domestic partnership.

(4) The court shall notify the State registrar of the termination of a domestic partnership pursuant to this subsection.

b. In the case of two persons who are each 62 years of age or older and not of the same sex and have established a domestic partnership pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4), the domestic partnership shall be deemed terminated if the two persons enter into a marriage with each other that is recognized by New Jersey law .

c. The State registrar shall revise the records of domestic partnership provided for in section 9 of P.L.2003, c.246 (C.26:8A-9) to reflect the termination of a domestic partnership pursuant to this section.

11. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read as follows:

C.10:5-5 Definitions relative to discrimination.

5. As used in this act, unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or

of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" include only those unlawful practices and acts specified in section 11 of this act.

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of this act, and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies.

f. "Employee" does not include any individual employed in the domestic service of any person.

g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. "Division" means the "Division on Civil Rights" created by this act.

i. "Attorney General" means the Attorney General of the State of New Jersey or his representative or designee.

j. "Commission" means the Commission on Civil Rights created by this act.

k. "Director" means the Director of the Division on Civil Rights.

l. "A place of public accommodation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water, or in the air, any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the

State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry or affectional or sexual orientation in the admission of students.

m. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, in the sale, lease or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under this act regarding discrimination on the basis of familial status apply with respect to housing for older persons.

o. "Real estate broker" includes a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, or offers or attempts

or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesperson" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. "Disability" means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

r. "Blind person" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist deaf persons or which is fitted with a special harness so as to be suitable as an aid to the mobility of a blind

person, and is used by a blind person who has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind or deaf as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide dogs with training, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally or customarily permitted or invited.

w. "Deaf person" means any person whose hearing is so severely impaired that the person is unable to hear and understand normal conversational speech through the unaided ear alone, and who must depend primarily on a supportive device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. "Service dog" means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

ee. "Qualified Medicaid applicant" means an individual who is a qualified applicant pursuant to P.L. 1968, c.413 (C.30:4D-1 et seq.).

ff. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

gg. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. "Affectional or sexual orientation" means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.

ii. "Heterosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. "Homosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. "Bisexuality" means affectional, emotional or physical attraction or behavior which is directed towards persons of either gender.

ll. "Familial status" means being the natural parent of a child, the adoptive parent of a child, the foster parent of a child, having a "parent and child relationship" with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. "Housing for older persons" means housing:

(1) provided under any State program that the Attorney General determines is specifically designed and operated to assist elderly persons (as defined in the State program); or provided under any federal program that the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the federal program); or

(2) intended for, and solely occupied by persons 62 years of age or older;
or

(3) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Attorney General shall adopt regulations which require at least the following factors:

(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

nn. "Genetic characteristic" means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome.

oo. "Genetic information" means the information about genes, gene products or inherited characteristics that may derive from an individual or family member.

pp. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to identify a predisposing genetic characteristic.

qq. "Domestic partnership" means a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

12. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read as follows:

C.10:5-12 Unlawful employment practices, discrimination.

11. It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, domestic partnership status, affectional or sexual

orientation, genetic information, sex, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age; provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee; provided further, that it shall not be an unlawful employment practice to require the retirement of any employee who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if that employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit sharing, savings or deferred retirement plan, or any combination of those plans, of the employer of that employee which equals in the aggregate at least \$27,000.00; and provided further that an employer may restrict employment to citizens of the United States where such restriction is required by federal law or is otherwise necessary to protect the national interest.

The provisions of subsections a. and b. of section 57 of P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

For the purposes of this subsection, a "bona fide executive" is a top level employee who exercises substantial executive authority over a significant number of employees and a large volume of business. A "high policy-making

position" is a position in which a person plays a significant role in developing policy and in recommending the implementation thereof.

b. For a labor organization, because of the race, creed, color, national origin, ancestry, age, marital status, domestic partnership status, affectional or sexual orientation, disability or sex of any individual, or because of the liability for service in the Armed Forces of the United States or nationality of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members, against any applicant for, or individual included in, any apprentice or other training program or against any employer or any individual employed by an employer; provided, however, that nothing herein contained shall be construed to bar a labor organization from excluding from its apprentice or other training programs any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular apprentice or other training program.

c. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment, or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, age, marital status, domestic partnership status, affectional or sexual orientation, disability, nationality or sex or liability of any applicant for employment for service in the Armed Forces of the United States, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

d. For any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act or because that person has filed a complaint, testified or assisted in any proceeding under this act or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

e. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

f. (1) For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages,

facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, disability or nationality of such person, or that the patronage or custom thereat of any person of any particular race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, disability or nationality is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained herein shall be construed to bar any place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex, and which shall include but not be limited to any summer camp, day camp, or resort camp, bathhouse, dressing room, swimming pool, gymnasium, comfort station, dispensary, clinic or hospital, or school or educational institution which is restricted exclusively to individuals of one sex, from refusing, withholding from or denying to any individual of the opposite sex any of the accommodations, advantages, facilities or privileges thereof on the basis of sex; provided further, that the foregoing limitation shall not apply to any restaurant as defined in R.S.33:1-1 or place where alcoholic beverages are served.

(2) Notwithstanding the definition of "public accommodation " as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor, manager, superintendent, agent, or employee of any private club or association to directly or indirectly refuse, withhold from or deny to any individual who has been accepted as a club member and has contracted for or is otherwise entitled to full club membership any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any member in the furnishing thereof on account of the race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, disability or nationality of such person.

In addition to the penalties otherwise provided for a violation of P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of subsection f. of this section is the holder of an alcoholic beverage license issued under the provisions of R.S.33:1-12 for that private club or association, the matter shall be referred to the Director of the Division of Alcoholic Beverage Control who shall impose an appropriate penalty in accordance with the procedures set forth in R.S.33:1-31.

g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease

any real property or part or portion thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments;

(2) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, familial status, disability, nationality or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

h. For any person, including but not limited to, any real estate broker, real estate salesperson, or employee or agent thereof:

(1) To refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease, assignment, or sublease any real property or part or portion thereof to any person or group of persons or to refuse to negotiate for the sale, rental, lease, assignment, or sublease of any real property or part or portion thereof to any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments, or to represent that any real property or portion thereof is not available for inspection, sale, rental, lease, assignment, or sublease when in fact it is so available, or otherwise to deny or withhold any real property or any part or portion of facilities thereof to or from any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability or nationality;

(2) To discriminate against any person because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental, lease, assignment or sublease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry

purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection h., shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied exclusively by individuals of one sex to any individual of the opposite sex on the basis of sex;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

i. For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution involved in the making or purchasing of any loan or extension of credit, for whatever purpose, whether secured by residential real estate or not, including but not limited to financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof or any agent or employee thereof:

(1) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, disability, familial status or nationality, in the granting, withholding, extending, modifying, renewing, or purchasing, or in the fixing of the rates, terms, conditions or provisions of any such loan, extension of credit or financial assistance or purchase thereof or in the extension of services in connection therewith;

(2) To use any form of application for such loan, extension of credit or financial assistance or to make record or inquiry in connection with applications for any such loan, extension of credit or financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, disability, familial status or nationality or any intent to make any such limitation, specification or discrimination; unless otherwise required by law or regulation to retain or use such information;

(3) (Deleted by amendment, P.L.2003, c.180).

(4) To discriminate against any person or group of persons because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To discriminate against any person or group of persons because that person's family includes children under 18 years of age, or to make an agreement or mortgage which provides that the agreement or mortgage shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

j. For any person whose activities are included within the scope of this act to refuse to post or display such notices concerning the rights or responsibilities of persons affected by this act as the Attorney General may by regulation require.

k. For any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership, or organization, for the purpose of inducing a transaction for the sale or rental of real property from which transaction such person or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including, but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

l. For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, domestic partnership status, liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers. This subsection shall not prohibit refusals or other actions (1) pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or (2) made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

m. For any person to:

(1) Grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provisions requiring any person to discriminate against or to certify that he, she or it has not dealt with any other person on the basis of the race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

(2) Refuse to grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision or certification.

The provisions of this subsection shall not apply to any letter of credit, contract, or other document which contains any provision pertaining to employee-employer collective bargaining, a labor dispute or an unfair labor practice, or made in connection with the protest of unlawful discrimination or an unlawful employment practice, if the other provisions of such letter of credit, contract, or other document do not otherwise violate the provisions of this subsection.

n. For any person to aid, abet, incite, compel, coerce, or induce the doing of any act forbidden by subsections l. and m. of section 11 of P.L. 1945, c.169 (C.10:5-12), or to attempt, or to conspire to do so. Such prohibited conduct shall include, but not be limited to:

(1) Buying from, selling to, leasing from or to, licensing, contracting with, trading with, providing goods, services, or information to, or otherwise doing business with any person because that person does, or agrees or attempts to do, any such act or any act prohibited by this subsection; or

(2) Boycotting, commercially blacklisting or refusing to buy from, sell to, lease from or to, license, contract with, provide goods, services or information to, or otherwise do business with any person because that person has not done or refuses to do any such act or any act prohibited by this subsection; provided that this subsection shall not prohibit refusals or other actions either pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

o. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such

organization, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability or nationality.

C.26:2H-12.22 Domestic partner permitted visitation in health care facility.

13. a. A health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall allow a patient's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), the children of the patient's domestic partner, and the domestic partner of the patient's parent or child to visit, unless one of the following conditions is met:

- (1) No visitors are allowed;
- (2) The health care facility reasonably determines that the presence of a particular visitor would endanger the health or safety of a patient, a member of the staff of the facility, or another visitor to the facility, or would significantly disrupt the operations of the facility; or
- (3) The patient has indicated to health care facility staff that the patient does not want the person to visit.

b. The provisions of subsection a. of this section shall not be construed as prohibiting a health care facility from otherwise establishing reasonable restrictions upon visitations, including restrictions upon the hours of visitation and number of visitors.

14. R.S.26:8-1 is amended to read as follows:

Definitions.

26:8-1. As used in this chapter:

"Vital statistics" means statistics concerning births, deaths, fetal deaths, marriages and domestic partnerships established pursuant to P.L.2003, c.246 (C.26:8A-1 et al.).

"Vital records" means the birth, death, fetal death, marriage and domestic partnership records from which vital statistics are produced.

"State registrar" means the State registrar of vital statistics; "Local registrar" or "registrar" means the local registrar of vital statistics of any district; and "registration district" or "district" means a registration district as constituted by this article.

"Live birth" or "birth" means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta attached.

"Authentication" means the entry by the State Medical Examiner or a county medical examiner, funeral director or physician into the New Jersey Electronic Death Registration System of a personal identification code, digital signature or other identifier unique to that user, by which the information entered into the system by the user is authenticated by the user who assumes responsibility for its accuracy. "Authentication" also means the process by which the State registrar or a local registrar, deputy registrar, alternate deputy registrar or subregistrar indicates that person's review and approval of information entered into the system by the State Medical Examiner or a county medical examiner, funeral director or physician.

"Electronic registration system" means any electronic method, including, but not limited to, one based on Internet technology, of collecting, transmitting, recording and authenticating information from one or more responsible parties, which is necessary to complete a vital record, and is designed to replace a manual, paper-based data collection, recordation and signature system.

"New Jersey Electronic Death Registration System" or "NJ-EDRS" is an electronic registration system for completing a certification of death or fetal death record that is authorized, designed and maintained by the State registrar.

15. R.S.26:8-4 is amended to read as follows:

Duty to furnish information relative to birth, death, marriage, domestic partnership.

26:8-4. Upon demand of the State registrar in person, by mail, by means of the NJ-EDRS, or through the local registrar, every physician, midwife, informant, funeral director, or other person having knowledge of the facts relative to any birth, death, fetal death, marriage or domestic partnership, shall supply such information as he may possess, upon a form provided by the State registrar, or through the NJ-EDRS, or upon the original birth, death, fetal death, marriage or domestic partnership certificate or its electronic facsimile or digitized form thereof.

16. R.S.26:8-17 is amended to read as follows:

Local registrar; appointment of deputy, alternate deputy registrar.

26:8-17. The local registrar, immediately upon acceptance of the appointment, shall appoint a deputy to assist in the normal, day-to-day operation of the office and whose duty shall be to act in the registrar's stead in case of absence, disability or death of the registrar. In case of death of the local registrar the deputy shall act as local registrar until a new local registrar has been appointed and qualified.

In addition to a deputy registrar, the local registrar may appoint one or two alternate deputy registrars if the local registrar deems such an appointment

to be necessary for the office to function efficiently and to provide quality service to the public. The deputy registrar and alternate deputy registrar shall have the authority to receive birth certificates and death certificates; to issue burial permits, and copies of birth, death, marriage and domestic partnership certificates; to take the oath on marriage license applications; and to issue marriage licenses and register domestic partnerships. The deputy registrar and alternate deputy registrar shall receive instructions from and perform their duties under the direct supervision of the registrar, who shall be the final authority with the responsibility of fulfilling the duties of the local registrar outlined in R.S.26:8-25. The deputy registrar and any alternate deputy registrar shall serve at the pleasure of the local registrar.

17. R.S.26:8-23 is amended to read as follows:

Duty of the department; examination of records.

26:8-23. The Department of Health and Senior Services shall have charge of the registration of births, deaths, fetal deaths, marriages and domestic partnerships and shall procure the prompt and accurate registration of the same in each registration district and in the department. The department may promulgate any rule or regulation which it deems necessary for the uniform and thorough enforcement of this section.

The department may decline permission to examine any record except in the presence of an officer or employee of the department.

18. R.S.26:8-24 is amended to read as follows:

Duties, responsibilities of State registrar.

R.S.26:8-24. The State registrar shall:

- a. Have general supervision throughout the State of the registration of vital records;
- b. Have supervisory power over local registrars, deputy local registrars, alternate deputy local registrars, and subregistrars, in the enforcement of the law relative to the disposal of dead bodies and the registration of vital records;
- c. Prepare, print, and supply to all registrars, upon request therefor, all blanks and forms used in registering the records required by said law, and provide for and prescribe the use of the NJ-EDRS. No other blanks or methods of registration shall be used than those supplied or approved by the State registrar;
- d. Carefully examine the certificates or electronic files received periodically from the local registrars or originating from their jurisdiction; and, if any are incomplete or unsatisfactory, require such further information to be supplied as may be necessary to make the record complete and satisfactory;

- e. Arrange or bind, and permanently preserve the certificates of vital records, or the information comprising those records, in a systematic manner and in a form that is deemed most consistent with contemporary and developing standards of vital statistical archival record keeping;
- f. Prepare and maintain a comprehensive and continuous index of all vital records registered, the index to be arranged alphabetically;
 - 1. In the case of deaths, by the name of the decedent;
 - 2. In the case of births, by the name of child, if given, and if not, then by the name of father or mother;
 - 3. In the case of marriages, by the surname of the husband and also by the maiden name of the wife;
 - 4. In the case of domestic partnerships, by the surname of each of the partners; and
- g. Mark the birth certificate of a missing child when notified by the Missing Persons Unit in the Department of Law and Public Safety pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c); and
- h. Develop and provide to local registrars an education and training program, which the State registrar may require each local registrar to complete as a condition of retaining that position, and which may be offered to deputy local registrars, alternate deputy local registrars and subregistrars at the discretion of the State registrar, that includes material designed to implement the NJ-EDRS and to familiarize local registrars with the statutory requirements applicable to their duties and any rules and regulations adopted pursuant thereto, as deemed appropriate by the State registrar.

19. R.S.26:8-25 is amended to read as follows:

Duties, responsibilities of local registrar.

26:8-25. The local registrar, under the supervision and direction of the State registrar, shall:

- a. Strictly and thoroughly enforce the law relative to the disposal of dead bodies and the registration of vital records in his registration district;
- b. Supply blank forms of certificates to such persons as require them;
- c. Supply to every physician, midwife, and funeral director a copy of the law relative to the registration of vital records and the disposal of dead bodies, together with such rules and regulations as may be prepared by the State registrar relative to their enforcement;
- d. Sign his name and insert the date of filing on each certificate of birth, marriage, domestic partnership and death or otherwise authenticate the local registrar's identity through the NJ-EDRS as prescribed by the State registrar;
- e. Examine each certificate of birth, marriage, domestic partnership or death when presented for record in order to ascertain whether or not it has

been made in accordance with law and the instructions of the State registrar; and if incomplete and unsatisfactory, have the same corrected;

f. At the expense of the municipality make a complete and accurate copy of each birth, marriage, domestic partnership and death certificate registered by him on a form or in a manner prescribed by the State registrar, to be preserved in his office as the local record or in the NJ-EDRS as prescribed by the State registrar;

g. On the tenth day of each month or sooner if requested by the department, transmit to the State registrar all original birth, marriage, domestic partnership and death certificates received by him for the preceding month, except that a record created on the NJ-EDRS as prescribed by the State registrar shall be deemed to have been transmitted. If no births, marriages, domestic partnerships or deaths occurred in any month, he shall, on or before the tenth day of the following month, report that fact to the State registrar on a card provided for such purpose;

h. Make an immediate report to the State registrar of any violation of R.S.26:6-1 et seq., R.S.26:8-1 et seq., or R.S.37:1-1 et seq. coming to his knowledge;

i. In the case of any birth in his registration district to parents who are residents of another registration district or of the marriage in his registration district of any couple who obtained the marriage license in another registration district, or of the death in his registration district of any person who at the time of death was a resident of another registration district notify the registrar of the other registration district, within five days of the birth, marriage, or death, on forms prescribed by the State registrar. All entries relating to cause of death on the original certificate shall be entered on the death form sent to the registrar of the other registration district. A record created on the NJ-EDRS as prescribed by the State registrar shall be deemed to have been transmitted to the registrar of the other registration district;

j. Mark the birth certificate of a missing child born in his registration district when notified by the State registrar pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c); and

k. Make computer facilities with access to the NJ-EDRS available to funeral directors and physicians registered with the NJ-EDRS, within the regular established business hours of the local registrar, for the purpose of providing information necessary to complete a death record.

20. R.S.26:8-48 is amended to read as follows:

Amendments to certificate, recording, authentication.

26:8-48. A certificate of birth, fetal death, marriage, domestic partnership or death heretofore or hereafter filed with the State registrar shall not be altered

or changed otherwise than by amendments properly signed, dated and witnessed, or as otherwise recorded and authenticated on the NJ-EDRS as prescribed by the State registrar.

21. R.S.26:8-51 is amended to read as follows:

Corrections to marriage, domestic partnership certificates.

26:8-51. Corrections to marriage or domestic partnership certificates shall be signed by the person who signed the certificate or by any other person having personal knowledge of the matters sought to be corrected which other person shall state such matters on his oath.

22. R.S.26:8-55 is amended to read as follows:

Submitting false certificate; penalty.

26:8-55. Any person knowingly submitting a certificate pursuant to this article containing incorrect particulars relating to any birth, marriage, domestic partnership or death shall be subject to a penalty of not more than \$500, which shall be recovered with costs in a summary proceeding in the name of the department.

23. R.S.26:8-60 is amended to read as follows:

Fee for transmitting certificate.

26:8-60. Each local registrar shall be entitled to receive from the proper disbursing officer of the municipality or county the sum of \$1 for each marriage or domestic partnership certificate properly transmitted to the State Registrar.

In any registration district, the body appointing local registrars may, in lieu of fees, provide that officers performing the above service shall receive a fixed compensation to be determined by such body.

24. R.S.26:8-62 is amended to read as follows:

Certification, certified copy of records, search fee.

26:8-62. a. The State registrar shall, upon request, supply to a person who establishes himself as one of the following: the subject of the record of a birth, death, fetal death or marriage, as applicable; the subject's parent, legal guardian or other legal representative; the subject's spouse, child, grandchild or sibling, if of legal age, or the subject's legal representative; an agency of State or federal government for official purposes; a person possessing an order of a court of competent jurisdiction; or a person who is authorized under other emergent circumstances as determined by the commissioner, a certification or certified copy of that record registered under the provisions of R.S.26:8-1 et seq., or any domestic partnership registered under the provisions of P.L.2003, c.246

(C.26:8A-1 et al.), for any of which, except as provided by R.S.26:8-63, the State registrar shall be entitled to a search fee, if any, as provided by R.S.26:8-64, to be paid by the person. For the purposes of this subsection, any employee of a mortuary registered pursuant to P.L.1952, c.340 (C.45:7-32 et seq.), or a funeral director licensed pursuant to that act who is affiliated with a registered mortuary, if the mortuary was recorded on the original certificate of death, shall be construed to be the subject's legal representative and entitled to obtain full and complete copies of death certificates or certifications thereof.

b. The State registrar shall, upon request, supply to any applicant a certified transcript of any entry contained in the records of the New Jersey State census for which, except as provided by R.S.26:8-63, he shall be entitled to a search fee as provided by R.S.26:8-64, to be paid by the applicant.

c. For each death registration initiated on the NJ-EDRS on or after the first day of the first month following the date of enactment of P.L.2003, c.221 but before the first day of the thirty-seventh month following the date of enactment of P.L.2003, c.221, the State registrar shall be paid a recording fee for each record filed, whether by means of the current paper process or electronically, in an amount to be determined by the State registrar but not exceeding \$10, from the account of the funeral home, which may include this amount in the funeral expenses charged to the estate or person accepting responsibility for the disposition of the deceased's human remains and the costs associated therewith; provided however, this fee shall not apply to the death registration of a person who died while in the military or naval or maritime or merchant marine service of the United States whose death is recorded pursuant to section 1 of P.L.1950, c.299 (C.26:6-5.2). The State registrar shall deposit the proceeds from the recording fee into the New Jersey Electronic Death Registration Support Fund established pursuant to section 17 of P.L.2003, c.221 (C.26:8-24.2).

25. R.S.26:8-63 is amended to read as follows:

Free certified copies.

26:8-63. The State registrar shall:

a. Furnish a certification or certified copy of a birth, marriage, domestic partnership, fetal death or death certificate without fee in the prosecution of any claim for public pension or for military or naval enlistment purposes; and

b. Furnish the United States Public Health Service without expense to the State, microfilm or photocopy images of birth, marriage, domestic partnership, fetal death and death certificates without payment of the fees prescribed in this article; and

c. Furnish a certified transcript of any entry in the records of the New Jersey State census without fee for certification in the prosecution of any claim for public pension, for military or naval enlistment purposes; and

d. Furnish without fee upon request for administrative use by any city, State or Federal agency a certified transcript of any New Jersey State census entry, or a certification or certified copy of a birth, death, fetal death, marriage or domestic partnership certificate.

26. R.S.26:8-64 is amended to read as follows:

Search of files, records, fee.

26:8-64. a. For any search of the files and records of births, deaths, marriages or domestic partnerships when the correct year only is supplied by the applicant, whether or not a certification or a certified copy is made, the State Registrar shall be entitled to a minimum fee of \$4, plus a fee of \$1 for each additional year searched, which fee shall be paid by the applicant, except as provided by R.S.26:8-63. The fee for each additional copy shall be \$2.

b. For all searches of the New Jersey State census records, except as otherwise provided herein, the State Registrar shall be entitled to a fee of \$2 for each address searched in any census year.

c. Conduct without fee upon request for administrative use by any city, state, or federal agency, a search for any New Jersey State census entry.

27. Section 1 of P.L.1977, c.237 (C.26:2H-32) is amended to read as follows:

C.26:2H-32 Definitions.

1. The following words or phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

a. "Nursing home" means a facility providing therein nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service, or any combination of the foregoing and in addition thereto, providing nursing care and health-related service, or either of them, to persons who are not occupants of the facility.

b. "Affiliate" means (1) with respect to a partnership, each partner thereof; (2) with respect to a corporation, each officer, director, principal stockholder or controlling person thereof; (3) with respect to a natural person (a) each member of said person's immediate family, (b) each partnership and each partner thereof of which said person or any affiliate of said person is a partner, and (c) each corporation in which said person or any affiliate of said person is an officer, director, principal stockholder or controlling person.

c. "Controlling person" of any corporation, partnership or other entity means any person who has the ability, directly or indirectly, to direct or cause

the direction of the management or policies of said corporation, partnership or other entity.

d. "Immediate family" of any person includes each parent, child, spouse, brother, sister, first cousin, aunt and uncle of such person, whether such relationship arises by birth, marriage or adoption, as well as the domestic partner of that person as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) and the domestic partner's parent and adult child.

e. "Principal stockholder" of a corporation means any person who beneficially owns, holds or has the power to vote, 10% or more of any class of securities issued by said corporation.

28. Section 5 of P.L.1991, c.201 (C.26:2H-57) is amended to read as follows:

C.26:2H-57 Proxy, instruction directive; reaffirmed, modified, revoked.

5. a. A declarant may reaffirm or modify either a proxy directive, or an instruction directive, or both. The reaffirmation or modification shall be made in accordance with the requirements for execution of an advance directive pursuant to section 4 of this act.

b. A declarant may revoke an advance directive, including a proxy directive, or an instruction directive, or both, by the following means:

(1) Notification, orally or in writing, to the health care representative, physician, nurse or other health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or

(2) Execution of a subsequent proxy directive or instruction directive, or both, in accordance with section 4 of this act.

c. Designation of the declarant's spouse as health care representative shall be revoked upon divorce or legal separation, and designation of the declarant's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) as health care representative shall be revoked upon termination of the declarant's domestic partnership, unless otherwise specified in the advance directive.

d. An incompetent patient may suspend an advance directive, including a proxy directive, an instruction directive, or both, by any of the means stated in paragraph (1) of subsection b. of this section. An incompetent patient who has suspended an advance directive may reinstate that advance directive by oral or written notification to the health care representative, physician, nurse or other health care professional of an intent to reinstate the advance directive.

e. Reaffirmation, modification, revocation or suspension of an advance directive is effective upon communication to any person capable of transmitting

the information including the health care representative, the attending physician, nurse or other health care professional responsible for the patient's care.

29. Section 6 of P.L.1991, c.201 (C.26:2H-58) is amended to read as follows:

C.26:2H-58 Designation of health care representative; limitations.

6. a. A declarant may execute a proxy directive, pursuant to the requirements of section 4 of this act, designating a competent adult to act as his health care representative.

(1) A competent adult, including, but not limited to, a declarant's spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), adult child, parent or other family member, friend, religious or spiritual advisor, or other person of the declarant's choosing, may be designated as a health care representative.

(2) An operator, administrator or employee of a health care institution in which the declarant is a patient or resident shall not serve as the declarant's health care representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.

This restriction does not apply to a physician, if the physician does not serve as the patient's attending physician and the patient's health care representative at the same time.

(3) A declarant may designate one or more alternate health care representatives, listed in order of priority. In the event the primary designee is unavailable, unable or unwilling to serve as health care representative, or is disqualified from such service pursuant to this section or any other law, the next designated alternate shall serve as health care representative. In the event the primary designee subsequently becomes available and able to serve as health care representative, the primary designee may, insofar as then practicable, serve as health care representative.

(4) A declarant may direct the health care representative to consult with specified individuals, including alternate designees, family members and friends, in the course of the decision making process.

(5) A declarant shall state the limitations, if any, to be placed upon the authority of the health care representative including the limitations, if any, which may be applicable if the declarant is pregnant.

b. A declarant may execute an instruction directive, pursuant to the requirements of section 4 of this act, stating the declarant's general treatment philosophy and objectives; or the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of health care, including life-sustaining treatment; or both. An instruction directive may, but need not,

be executed contemporaneously with, or be attached to, a proxy directive.

30. Section 8 of P.L.1989, c.303 (C.26:5C-12) is amended to read as follows:

C.26:5C-12 Consent to disclose record of deceased, incompetent person.

8. When consent is required for disclosure of the record of a deceased or legally incompetent person who has or is suspected of having AIDS or HIV infection, consent may be obtained:

a. From an executor, administrator of the estate, or authorized representative of the legally incompetent or deceased person;

b. From the person's spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), primary caretaking partner or, if none, by another member of the person's family; and

c. From the commissioner in the event that a deceased person has neither an authorized representative or next-of-kin.

31. Section 1 of P.L.1954, c.113 (C.26:6-50) is amended to read as follows:

C.26:6-50 Persons who may consent to examination.

1. Any physician licensed to practice medicine and surgery in this State may conduct a post-mortem and necroscopic examination upon the body of a deceased person if he first obtains the consent in writing of any of the following persons who shall have assumed responsibility and custody of the body for purposes of the burial: surviving spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), adult child, parent, or other next of kin, of the deceased person. In the absence of any of the foregoing named persons any other person charged by law with and who shall have assumed responsibility and custody of the body for the burial may give such consent. Where 2 or more of the abovementioned have assumed such responsibility and custody of the body for purposes of burial, the consent of 1 of such persons shall be sufficient.

32. Section 1 of P.L.1969, c.161 (C.26:6-57) is amended to read as follows:

C.26:6-57 Definitions relative to human body part donations.

1. As used in this act:

(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any State for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited, or approved under the laws of any State; includes a hospital operated by the United States Government, a State, or a subdivision thereof, although not required to be licensed under State laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any State.

(h) "State" includes any State, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(i) "Transplant recovery specialist" means a medical professional licensed by this or another State or technician trained by an organ procurement organization in accordance with federal standards pursuant to 42 U.S.C.274(b) and nationally accredited standards for human body part removal.

(j) "Organ procurement organization" means an organization which is qualified by the Secretary of Health and Human Services pursuant to 42 U.S.C.273(b).

(k) "Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

33. Section 2 of P.L.1969, c.161 (C.26:6-58) is amended to read as follows:

C.26:6-58 Gift of all or part of body; consent; examination; rights of donee.

2. (a) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 3, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 3:

- (1) The spouse or domestic partner,
- (2) An adult son or daughter,
- (3) Either parent,
- (4) An adult brother or sister,
- (5) A guardian of the person of the decedent at the time of his death,

(6) Any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 7(d).

34. Section 1 of P.L.1987, c.244 (C.26:6-58.1) is amended to read as follows:

C.26:6-58.1 Consent for organ donations.

1. a. At or around the time of death of a patient in a hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), the hospital shall notify its designated organ procurement organization of the patient's death. If the patient has a validly executed donor card, donor designation on a driver's license, advance directive pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.), will, other document of gift, or registration with a Statewide organ and tissue donor registry, the organ procurement organization representative or the hospital's designated requestor shall attempt to notify a person listed in this subsection of the gift. If no document of gift is known to the organ procurement organization representative or the designated requestor, one of those two individuals shall ask the persons listed in this subsection whether the decedent had a validly executed document of gift. If there is no evidence of an anatomical gift or actual notice of contrary indications by the decedent, the organ procurement organization representative or the designated requestor shall attempt to notify a person listed in this subsection of the option to donate organs or tissues. Consent need only be obtained from an available person in the highest priority class applicable, but an anatomical gift shall be barred by actual notice of opposition by a member of the same or a prior class. If no available member of a class will make a decision, the organ procurement organization representative or the designated requestor shall approach a member of the next class.

The classes in order of priority are:

- (1) the spouse or domestic partner,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,

(5) a guardian of the person of the decedent at the time of the decedent's death, or

(6) any other person authorized or under the obligation to dispose of the body.

For the purposes of this section, a person is available if that person can be approached within a time period compatible with effecting an anatomical gift.

b. The person in charge of the hospital or that person's designated representative shall indicate in the medical record of the decedent whether or not consent was granted, the name of the person granting or refusing the consent, and that person's relationship to the decedent.

c. A gift made pursuant to the request required by this act shall be executed pursuant to the applicable provisions of P.L.1969, c.161 (C.26:6-57 et seq.).

d. A person who acts in good faith in accordance with the provisions of this act is not liable for any damages in any civil action or subject to prosecution in any criminal proceeding for any act or omission of the person.

e. If the decedent is deemed an unsuitable candidate for donation, an explanatory notation shall be made part of the medical record of the decedent.

35. Section 7 of P.L.1969, c.161 (C.26:6-63) is amended to read as follows:

C.26:6-63 Acceptance, rejection of gift, determination of time of death; civil liability; application of autopsy laws.

7. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services, and after it has served its scientific purposes, provide for its disposal by burial or cremation. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse or domestic partner, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this act or the anatomical gift laws of another State or foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this act are subject to the laws of this State prescribing powers and duties with respect to autopsies.

36. R.S.54:34-1 is amended to read as follows:

Transfers taxable.

54:34-1. Except as provided in section 54:34-4 of this Title, a tax shall be and is hereby imposed at the rates set forth in section 54:34-2 of this Title upon the transfer of property, real or personal, of the value of \$500.00 or over, or of any interest therein or income therefrom, in trust or otherwise, to or for the use of any transferee, distributee or beneficiary in the following cases:

a. Where real or tangible personal property situated in this State or intangible personal property wherever situated is transferred by will or by the intestate laws of this State from a resident of this State dying seized or possessed thereof.

b. Where real or tangible personal property within this State of a decedent not a resident of this State at the time of his death is transferred by will or intestate law.

c. Where real or tangible personal property within this State of a resident of this State or intangible personal property wherever situate of a resident of this State or real or tangible personal property within this State of a nonresident, is transferred by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

A transfer by deed, grant, bargain, sale or gift made without adequate valuable consideration and within three years prior to the death of the grantor, vendor or donor of a material part of his estate or in the nature of a final disposition or distribution thereof, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of subsection c. of this section; but no such transfer made prior to such three-year period shall be deemed or held to have been made in contemplation of death.

d. Where by transfer of a resident decedent of real or tangible personal property within this State or intangible property wherever situate, or by transfer of a nonresident decedent of real or tangible personal property within this State, a transferee, distributee or beneficiary comes into the possession or enjoyment therein of:

(1) An estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect on or after July 4, 1909; or

(2) Property transferred pursuant to a power of appointment contained in an instrument taking effect on or after July 4, 1909.

e. When a decedent appoints or names one or more executors or trustees and bequeaths or devises property to him or them in lieu of commissions or allowances, the transfer of which property would otherwise be taxable, or

appoints him or them his residuary legatee or legatees, and the bequest, devise or residuary legacy exceeds what would be reasonable compensation for his or their services, such excess shall be deemed a transfer liable to tax. The Superior Court having jurisdiction in the case, shall determine what is a reasonable compensation.

f. The right of the surviving joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of real or personal property held in the joint names of two or more persons, or deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, excluding, however, the right of a spouse, as a surviving joint tenant with his or her deceased spouse, or the right of a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), as a surviving joint tenant with that person's deceased domestic partner, to the immediate ownership or possession and enjoyment of a membership certificate or stock in a cooperative housing corporation, the ownership of which entitles such member or stockholder to occupy real estate for dwelling purposes as the principal residence of the decedent and spouse or domestic partner, as applicable, shall upon the death of one of such persons, be deemed a transfer taxable in the same manner as though such property had belonged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed by his will to the surviving joint tenant or joint tenants, person or persons, excepting therefrom such part of the property as such survivor or survivors may prove to the satisfaction of the Director of the Division of Taxation to have originally belonged to him or them and never to have belonged to the decedent.

In the case of a nonresident decedent, subsection f. of this section shall apply only to real or tangible personal property within this State.

37. R.S.54:34-2 is amended to read as follows:

Transfer inheritance tax; phase-out.

54:34-2. a. (1) The transfer of property to a husband or wife, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), of a decedent shall be taxed at the following rates:

For transfers made through December 31, 1984:

On any amount in excess of \$15,000.00, up to \$50,000.00	2%
On any amount in excess of \$50,000.00, up to \$100,000.00	3%
On any amount in excess of \$100,000.00, up to \$150,000.00	4%
On any amount in excess of \$150,000.00, up to \$200,000.00	5%
On any amount in excess of \$200,000.00, up to \$300,000.00	6%
On any amount in excess of \$300,000.00, up to \$500,000.00	7%
On any amount in excess of \$500,000.00, up to \$700,000.00	8%

On any amount in excess of \$700,000.00, up to \$900,000.00	9%
On any amount in excess of \$900,000.00, up to \$1,100,000.00	10%
On any amount in excess of \$1,100,000.00, up to \$1,400,000.00	11%
On any amount in excess of \$1,400,000.00, up to \$1,700,000.00	12%
On any amount in excess of \$1,700,000.00, up to \$2,200,000.00	13%
On any amount in excess of \$2,200,000.00, up to \$2,700,000.00	14%
On any amount in excess of \$2,700,000.00, up to \$3,200,000.00	15%
On any amount in excess of \$3,200,000.00	16%

For transfers made on or after January 1, 1985 there shall be no tax imposed under this paragraph.

(2) The transfer of property to a father, mother, grandparent, child or children of a decedent, or to any child or children adopted by the decedent in conformity with the laws of this State, or of any of the United States or of a foreign country, or the issue of any child or legally adopted child of a decedent, shall be taxed at the following rates:

For transfers through June 30, 1985:

On any amount in excess of \$15,000.00, up to \$50,000.00	2%
On any amount in excess of \$50,000.00, up to \$100,000.00	3%
On any amount in excess of \$100,000.00, up to \$150,000.00	4%
On any amount in excess of \$150,000.00, up to \$200,000.00	5%
On any amount in excess of \$200,000.00, up to \$300,000.00	6%
On any amount in excess of \$300,000.00, up to \$500,000.00	7%
On any amount in excess of \$500,000.00, up to \$700,000.00	8%
On any amount in excess of \$700,000.00, up to \$900,000.00	9%
On any amount in excess of \$900,000.00, up to \$1,100,000.00	10%
On any amount in excess of \$1,100,000.00, up to \$1,400,000.00	11%
On any amount in excess of \$1,400,000.00, up to \$1,700,000.00	12%
On any amount in excess of \$1,700,000.00, up to \$2,200,000.00	13%
On any amount in excess of \$2,200,000.00, up to \$2,700,000.00	14%
On any amount in excess of \$2,700,000.00, up to \$3,200,000.00	15%
On any amount in excess of \$3,200,000.00	16%

For transfers made from July 1, 1985 through June 30, 1986:

On any amount in excess of \$50,000.00, up to \$100,000.00	3%
On any amount in excess of \$100,000.00, up to \$150,000.00	4%
On any amount in excess of \$150,000.00, up to \$200,000.00	5%
On any amount in excess of \$200,000.00, up to \$300,000.00	6%
On any amount in excess of \$300,000.00, up to \$500,000.00	7%
On any amount in excess of \$500,000.00, up to \$700,000.00	8%
On any amount in excess of \$700,000.00, up to \$900,000.00	9%
On any amount in excess of \$900,000.00, up to \$1,100,000.00	10%
On any amount in excess of \$1,100,000.00, up to \$1,400,000.00	11%
On any amount in excess of \$1,400,000.00, up to \$1,700,000.00	12%

- On any amount in excess of \$1,700,000.00, up to \$2,200,000.00 . . . 13%
- On any amount in excess of \$2,200,000.00, up to \$2,700,000.00 . . . 14%
- On any amount in excess of \$2,700,000.00, up to \$3,200,000.00 . . . 15%
- On any amount in excess of \$3,200,000.00 16%

For transfers made from July 1, 1986 through June 30, 1987:

- On any amount in excess of \$150,000.00, up to \$200,000.00 5%
- On any amount in excess of \$200,000.00, up to \$300,000.00 6%
- On any amount in excess of \$300,000.00, up to \$500,000.00 7%
- On any amount in excess of \$500,000.00, up to \$700,000.00 8%
- On any amount in excess of \$700,000.00, up to \$900,000.00 9%
- On any amount in excess of \$900,000.00, up to \$1,100,000.00 10%
- On any amount in excess of \$1,100,000.00, up to \$1,400,000.00 . . . 11%
- On any amount in excess of \$1,400,000.00, up to \$1,700,000.00 . . . 12%
- On any amount in excess of \$1,700,000.00, up to \$2,200,000.00 . . . 13%
- On any amount in excess of \$2,200,000.00, up to \$2,700,000.00 . . . 14%
- On any amount in excess of \$2,700,000.00, up to \$3,200,000.00 . . . 15%
- On any amount in excess of \$3,200,000.00 16%

For transfers made from July 1, 1987 through June 30, 1988:

- On any amount in excess of \$250,000.00, up to \$300,000.00 6%
- On any amount in excess of \$300,000.00, up to \$500,000.00 7%
- On any amount in excess of \$500,000.00, up to \$700,000.00 8%
- On any amount in excess of \$700,000.00, up to \$900,000.00 9%
- On any amount in excess of \$900,000.00, up to \$1,100,000.00 10%
- On any amount in excess of \$1,100,000.00, up to \$1,400,000.00 . . . 11%
- On any amount in excess of \$1,400,000.00, up to \$1,700,000.00 . . . 12%
- On any amount in excess of \$1,700,000.00, up to \$2,200,000.00 . . . 13%
- On any amount in excess of \$2,200,000.00, up to \$2,700,000.00 . . . 14%
- On any amount in excess of \$2,700,000.00, up to \$3,200,000.00 . . . 15%
- On any amount in excess of \$3,200,000.00 16%

For transfers made on or after July 1, 1988 there shall be no tax imposed under this subsection.

b. (Deleted by amendment.)

c. The transfer of property to a brother or sister of a decedent, wife or widow of a son of a decedent, or husband or widower of a daughter of a decedent shall be taxed at the following rates:

(1) For transfers through June 30, 1988:

- On any amount up to \$1,100,000.00 11%
- On any amount in excess of \$1,100,000.00, up to \$1,400,000.00 . . . 13%
- On any amount in excess of \$1,400,000.00, up to \$1,700,000.00 . . . 14%
- On any amount in excess of \$1,700,000.00 16%

(2) For transfers made on or after July 1, 1988:

- On any amount in excess of \$25,000.00, up to \$1,100,000.00 11%

On any amount in excess of \$1,100,000.00, up to \$1,400,000.00 . .	13%
On any amount in excess of \$1,400,000.00, up to \$1,700,000.00 . .	14%
On any amount in excess of \$1,700,000.00	16%

d. The transfer of property to every other transferee, distributee or beneficiary not hereinbefore classified shall be taxed at the following rates:

On any amount up to \$700,000.00	15%
On any amount in excess of \$700,000.00	16%

For every purpose of this subtitle all persons, including the decedent, shall be deemed to have been born in lawful wedlock and this provision shall apply to the estate of every decedent whether said decedent died before March 25, 1935, or shall die thereafter, but it shall not entitle any person to a refund of any tax paid before the aforementioned date.

38. R.S.54:34-4 is amended to read as follows:

Exemptions.

54:34-4. The following transfers of property shall be exempt from taxation:

a. Property passing to or for the use of the State of New Jersey, or to or for the use of a municipal corporation within the State or other political subdivision thereof, for exclusively public purposes.

b. Property passing to a beneficiary or beneficiaries having any present or future, vested, contingent or defeasible interest under any trust deed or agreement heretofore or hereafter executed by a resident or nonresident decedent, to the extent that the trust fund results from the proceeds of contracts of insurance heretofore or hereafter in force, insuring the life of such decedent, and paid or payable, at or after the death of such decedent, to the trustee or trustees under such trust deed or agreement.

c. Property passing to (i) a trustee or trustees of any trust deed or agreement heretofore or hereafter executed or (ii) to a trustee or trustees of a trust created by the will of a decedent, by virtue of any contract of insurance heretofore or hereafter in force insuring the life of a resident or nonresident decedent and the proceeds of which are paid or payable at or after the death of such decedent to such trustee or trustees for the benefit of a beneficiary or beneficiaries having any present or future, vested, contingent or defeasible interest under such trust deed, agreement or will.

d. That part of the estate of any decedent which passes to, for the use of or in trust for any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of or in trust for any institution or organization organized and operated exclusively for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or

other individual or corporation; provided, that this exemption shall not extend to transfers of property to such educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal, and like exemption of transfers of property for the benefit of such institutions and organizations of this State.

e. That part of the estate of any decedent who has heretofore died, or may hereafter die, received, either heretofore or hereafter, by the legal representatives of such decedent, whether directly from the United States, or through any intervening estate or estates, by reason of any war risk insurance certificate or policy, either term or converted, or any adjusted service certificate, issued by the United States. Nothing contained in this subsection e. shall entitle any person to a refund of any tax heretofore paid on the transfer of property of the nature aforementioned; and provided further, that the exemption provided for in this subsection e. shall not extend to that part of the estate of any decedent composed of property of the nature aforementioned, when such property was received by the decedent before death.

f. The proceeds of any contract of insurance heretofore or hereafter in force insuring the life of a resident or nonresident decedent paid or payable at or after the death of such decedent to any beneficiary or beneficiaries other than the estate or the executor or administrator of such decedent.

g. Any transfer, relinquishment, surrender or exercise at any time or times by a resident or nonresident of any right to nominate or change the beneficiary or beneficiaries of any contract of insurance heretofore or hereafter in force insuring the life of such resident or nonresident irrespective of whether such transfer, relinquishment, surrender or exercise of such right took place or whether the proceeds of such policy were paid or payable, before or after the taking effect of this act.

h. The value of any pension, annuity, retirement allowance, return of contributions, or benefit payable by the Government of the United States pursuant to the Civil Service Retirement Act to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent.

i. The value of any annuity payable by the Government of the United States pursuant to the Retired Serviceman's Family Protection Plan or the Survivor Benefit Plan to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent.

j. The value of any pension, annuity, retirement allowance or return of contributions, regardless of the source, which is a direct result of the decedent's employment under a qualified plan as defined by section 401(a), (b) and (c) or 2039(c) of the Internal Revenue Code, payable to a surviving spouse, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), and not otherwise exempted pursuant to this section or other law of the State of New Jersey.

39. N.J.S.54A:1-2 is amended to read as follows:

Definitions.

54A:1-2. As used in this act, unless the context clearly indicates otherwise, the following words and phrases shall have the following meaning:

a. "Director" means the Director of the Division of Taxation in the Department of the Treasury.

b. "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

c. "Excludable income" shall be limited to those payments set forth in chapter 6 hereunder.

d. "Gross income" shall include that set forth in chapter 5 hereunder.

e. "Dependent" means a spouse or child, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), or any individual related to the taxpayer and who is a dependent pursuant to the provisions of the Internal Revenue Code during a taxable year.

f. "Disabled" means total and permanent inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, including blindness. For purposes of this subsection, "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less.

g. "Medical expenses" means nonreimbursed payments for physicians, dental and other medical fees, hospital care, nursing care, medicines and drugs, prosthetic devices, X-rays and other diagnostic services conducted by or directed by a physician or dentist. In addition, medical expenses may also include amounts paid for transportation primarily for and essential to medical care and insurance (including amounts paid as premiums under part B of Title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care.

h. Partnership and partner. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

i. Blank.

j. Blank.

k. "Taxable year" means the calendar or fiscal accounting period for which a tax is payable under this act.

1. "Taxpayer" means any individual, estate or trust required to report or to pay taxes, interest and penalties under this act, or whose income in whole or in part is subject to the tax imposed by this act.

m. "Resident taxpayer" means an individual:

1. Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate no more than 30 days of the taxable year in this State; or

2. Who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State, unless such individual is in the Armed Forces of the United States.

n. "Nonresident taxpayer" means a taxpayer who is not a resident.

o. Resident estate or trust. A resident estate or trust means:

(1) The estate of a decedent who at his death was domiciled in this State,

(2) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this State, or

(3) A trust, or portion of a trust, consisting of the property of:

(a) A person domiciled in this State at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(b) A person domiciled in this State at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revert title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

p. Nonresident estate or trust. A nonresident estate or trust means an estate or trust which is not a resident.

q. Unless the context in which it occurs requires otherwise, the term "act" or "this act" shall mean the New Jersey Gross Income Tax Act, Title 54A of the New Jersey Statutes.

40. N.J.S.54A:3-1 is amended to read as follows:

Personal exemptions and deductions.

54A:3-1. Personal exemptions and deductions. Each taxpayer shall be allowed personal exemptions and deductions against his gross income as follows:

(a) Taxpayer. Each taxpayer shall be allowed a personal exemption of \$1,000.00 which may be taken as a deduction from his New Jersey gross income.

(b) Additional exemptions. In addition to the personal exemptions allowed in (a), the following additional personal exemptions shall be allowed as a deduction from gross income:

1. For the taxpayer's spouse, or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), who does not file separately - \$1,000.00.

2. For each dependent who qualifies as a dependent of the taxpayer during the taxable year for federal income tax purposes - \$1,500.00.

3. Taxpayer 65 years of age or over at the close of the taxable year - \$1,000.00.

4. Taxpayer's spouse 65 years of age or over at the close of the taxable year - \$1,000.00.

5. Blind or disabled taxpayer - \$1,000.00.

6. Blind or disabled spouse - \$1,000.00.

(c) Special Rule. The personal exemptions allowed under this section shall be limited to that percentage which the total number of months within a taxpayer's taxable year under this act bears to 12. For this purpose 15 days or more shall constitute a month.

(d) (Deleted by amendment, P.L.1993, c.178).

(e) Nonresidents. For taxable years to which a certification pursuant to section 3 of P.L.1993, c.320 (C.54A:2-1.2) applies, a nonresident taxpayer shall be allowed the same deduction for personal exemptions as a resident taxpayer. However, if (1) the nonresident taxpayer's gross income which is subject to tax under this act is exceeded by (2) the gross income which the nonresident taxpayer would be required to report under this act if the taxpayer were a resident by more than \$100.00, the taxpayer's deduction for personal exemptions shall be limited by the percentage which (1) is to (2).

41. Section 2 of P.L.1961, c.49 (C.52:14-17.26) is amended to read as follows:

C.52:14-17.26 Definitions relative to health care benefits for public employees.

2. As used in this act:

(a) The term "State" means the State of New Jersey.

(b) The term "commission" means the State Health Benefits Commission, created by section 3 of this act.

(c) The term "employee" means an appointive or elective officer or full-time employee of the State of New Jersey. For the purposes of this act an employee of Rutgers, The State University of New Jersey, shall be deemed to be an employee of the State, and an employee of the New Jersey Institute of Technology shall be considered to be an employee of the State during such

time as the Trustees of the Institute are party to a contractual agreement with the State Treasurer for the provision of educational services. The term "employee" shall further mean, for purposes of this act, a former employee of the South Jersey Port Corporation, who is employed by a subsidiary corporation or other corporation, which has been established by the Delaware River Port Authority pursuant to subdivision (m) of Article I of the compact creating the Delaware River Port Authority (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-146), and who is eligible for continued membership in the Public Employees' Retirement System pursuant to subsection j. of section 7 of P.L.1954, c.84 (C.43:15A-7).

For the purposes of this act the term "employee" shall not include persons employed on a short-term, seasonal, intermittent or emergency basis, persons compensated on a fee basis, persons having less than two months of continuous service or persons whose compensation from the State is limited to reimbursement of necessary expenses actually incurred in the discharge of their official duties. An employee paid on a 10-month basis, pursuant to an annual contract, will be deemed to have satisfied the two-month waiting period if the employee begins employment at the beginning of the contract year. The term "employee" shall also not include retired persons who are otherwise eligible for benefits under this act but who, although they meet the age eligibility requirement of Medicare, are not covered by the complete federal program. A determination by the commission that a person is an eligible employee within the meaning of this act shall be final and shall be binding on all parties.

(d)(1) The term "dependents" means an employee's spouse, or an employee's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), and the employee's unmarried children under the age of 23 years who live with the employee in a regular parent-child relationship. "Children" shall include stepchildren, legally adopted children and foster children provided they are reported for coverage and are wholly dependent upon the employee for support and maintenance. A spouse, domestic partner or child enlisting or inducted into military service shall not be considered a dependent during the military service. The term "dependents" shall not include spouses or domestic partners of retired persons who are otherwise eligible for the benefits under this act but who, although they meet the age eligibility requirement of Medicare, are not covered by the complete federal program.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary and subject to the provisions of paragraph (3) of this subsection, for the purposes of an employer other than the State that is participating in the State Health Benefits Program pursuant to section 3 of P.L.1964, c.125 (C.52:14-17.34), the term "dependents" means an employee's spouse and the employee's unmarried children under the age of 23 years who live with the employee in a regular parent-child relationship. "Children" shall include

stepchildren, legally adopted children and foster children provided they are reported for coverage and are wholly dependent upon the employee for support and maintenance. A spouse or child enlisting or inducted into military service shall not be considered a dependent during the military service. The term "dependents" shall not include spouses of retired persons who are otherwise eligible for benefits under P.L.1961, c.49 (C.52:14-17.25 et seq.) but who, although they meet the age eligibility requirement of Medicare, are not covered by the complete federal program.

(3) An employer other than the State that is participating in the State Health Benefits Program pursuant to section 3 of P.L.1964, c.125 (C.52:14-17.34) may adopt a resolution providing that the term "dependents" as defined in paragraph (2) of this subsection shall include domestic partners as provided in paragraph (1) of this subsection.

(e) The term "carrier" means a voluntary association, corporation or other organization, including a health maintenance organization as defined in section 2 of the "Health Maintenance Organizations Act," P.L.1973, c.337 (C.26:2J-2), which is lawfully engaged in providing or paying for or reimbursing the cost of, personal health services, including hospitalization, medical and surgical services, under insurance policies or contracts, membership or subscription contracts, or the like, in consideration of premiums or other periodic charges payable to the carrier.

(f) The term "hospital" means (1) an institution operated pursuant to law which is primarily engaged in providing on its own premises, for compensation from its patients, medical diagnostic and major surgical facilities for the care and treatment of sick and injured persons on an inpatient basis, and which provides such facilities under the supervision of a staff of physicians and with 24 hour a day nursing service by registered graduate nurses, or (2) an institution not meeting all of the requirements of (1) but which is accredited as a hospital by the Joint Commission on Accreditation of Hospitals. In no event shall the term "hospital" include a convalescent nursing home or any institution or part thereof which is used principally as a convalescent facility, residential center for the treatment and education of children with mental disorders, rest facility, nursing facility or facility for the aged or for the care of drug addicts or alcoholics.

(g) The term "State managed care plan" means a health care plan under which comprehensive health care services and supplies are provided to eligible employees, retirees, and dependents: (1) through a group of doctors and other providers employed by the plan; or (2) through an individual practice association, preferred provider organization, or point of service plan under which services and supplies are furnished to plan participants through a network of doctors and other providers under contracts or agreements with the plan on a prepayment or reimbursement basis and which may provide for payment

or reimbursement for services and supplies obtained outside the network. The plan may be provided on an insured basis through contracts with carriers or on a self-insured basis, and may be operated and administered by the State or by carriers under contracts with the State.

(h) The term "Medicare" means the program established by the "Health Insurance for the Aged Act," Title XVIII of the "Social Security Act," Pub.L. 89-97 (42 U.S.C. s.1395 et seq.), as amended, or its successor plan or plans.

(i) The term "traditional plan" means a health care plan which provides basic benefits, extended basic benefits and major medical expense benefits as set forth in section 5 of P.L.1961, c.49 (C.52:14-17.29) by indemnifying eligible employees, retirees, and dependents for expenses for covered health care services and supplies through payments to providers or reimbursements to participants.

42. Section 6 of P.L.1954, c.84 (C.43:15A-6) is amended to read as follows:

C.43:15A-6 Definitions.

6. As used in this act:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by or on behalf of the member, standing to the credit of the member's individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this act.

c. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, granted under the provisions of this act, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

d. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this act.

e. "Child" means a deceased member's unmarried child either (1) under the age of 18 or (2) of any age who, at the time of the member's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

f. "Parent" shall mean the parent of a member who was receiving at least 1/2 of the parent's support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

g. (1) "Widower," for employees of the State, means the man to whom a member was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least five years before the date of her death and to whom she continued to be married or a domestic partner until the date of her death and who was receiving at least 1/2 of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of, or establishment of a domestic partnership by, the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(2) Subject to the provisions of paragraph (3) of this subsection, "widower," for employees of public employers other than the State, means the man to whom a member was married at least five years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least 1/2 of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower shall be considered terminated by marriage of the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(3) A public employer other than the State may adopt a resolution providing that the term "widower" as defined in paragraph (2) of this subsection shall include domestic partners as provided in paragraph (1) of this subsection.

h. "Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

i. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.

j. "Medical board" shall mean the board of physicians provided for in section 17 (C.43:15A-17).

k. "Pension" means payments for life derived from appropriations made by the employer as provided in this act.

l. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted under the provisions of this act, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

m. "Public Employees' Retirement System of New Jersey," hereinafter referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this act including the several funds placed under said system. By that name all of its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

n. "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of the assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

o. "Retirement allowance" means the pension plus the annuity.

p. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I, between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90-day service as herein provided; and provided further, that any member classed as a veteran pursuant to this paragraph prior to August 1, 1966, shall continue to be classed as a veteran whether or not that person completed the 90-day service between said dates as herein provided;

(12) Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(13) Vietnam conflict on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training

under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 90 days' service as herein provided;

(14) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(17) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of

inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(18) Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

(19) Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement;

(20) Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided; and

(21) Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before

the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

q. (1) "Widow," for employees of the State, means the woman to whom a member was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least five years before the date of his death and to whom he continued to be married or a domestic partner until the date of his death and who was receiving at least 1/2 of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow will be considered terminated by the marriage of, or establishment of a domestic partnership by, the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(2) Subject to the provisions of paragraph (3) of this subsection, "widow," for employees of public employers other than the State, means the woman to whom a member was married at least five years before the date of his death and to whom he continued to be married until the date of his death and who was receiving at least 1/2 of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow shall be considered terminated by the marriage of the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(3) A public employer other than the State may adopt a resolution providing that the term "widow" as defined in paragraph (2) of this subsection shall include domestic partners as provided in paragraph (1) of this subsection.

r. "Compensation" means the base or contractual salary, for services as an employee, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular workday or the regular work year. In cases where salary includes maintenance, the retirement system shall fix the value of that part of the salary not paid in money which shall be considered under this act.

43. Section 1 of P.L.1944, c.255 (C.43:16A-1) is amended to read as follows:

C.43:16A-1 Definitions relative to Police and Firemen's Retirement System.

1. As used in this act:

(1) "Retirement system" or "system" shall mean the Police and Firemen's Retirement System of New Jersey as defined in section 2 of this act.

(2) (a) "Policeman" shall mean a permanent, full-time employee of a law enforcement unit as defined in section 2 of P.L.1961, c.56 (C.52:17B-67) or the State, other than an officer or trooper of the Division of State Police whose position is covered by the State Police Retirement System, whose primary duties include the investigation, apprehension or detention of persons suspected or convicted of violating the criminal laws of the State and who:

(i) is authorized to carry a firearm while engaged in the actual performance of his official duties;

(ii) has police powers;

(iii) is required to complete successfully the training requirements prescribed by P.L.1961, c.56 (C.52:17B-66 et seq.) or comparable training requirements as determined by the board of trustees; and

(iv) is subject to the physical and mental fitness requirements applicable to the position of municipal police officer established by an agency authorized to establish these requirements on a Statewide basis, or comparable physical and mental fitness requirements as determined by the board of trustees.

The term shall also include an administrative or supervisory employee of a law enforcement unit or the State whose duties include general or direct supervision of employees engaged in investigation, apprehension or detention activities or training responsibility for these employees and a requirement for engagement in investigation, apprehension or detention activities if necessary, and who is authorized to carry a firearm while in the actual performance of his official duties and has police powers.

(b) "Fireman" shall mean a permanent, full-time employee of a firefighting unit whose primary duties include the control and extinguishment of fires and who is subject to the training and physical and mental fitness requirements applicable to the position of municipal firefighter established by an agency authorized to establish these requirements on a Statewide basis, or comparable training and physical and mental fitness requirements as determined by the board of trustees. The term shall also include an administrative or supervisory employee of a firefighting unit whose duties include general or direct supervision of employees engaged in fire control and extinguishment activities or training responsibility for these employees and a requirement for engagement in fire control and extinguishment activities if necessary. As used in this paragraph, "firefighting unit" shall mean a municipal fire department, a fire district, or

an agency of a county or the State which is responsible for control and extinguishment of fires.

(3) "Member" shall mean any policeman or fireman included in the membership of the retirement system pursuant to this amendatory and supplementary act, P.L.1989, c.204 (C.43:16A-15.6 et al.).

(4) "Board of trustees" or "board" shall mean the board provided for in section 13 of this act.

(5) "Medical board" shall mean the board of physicians provided for in section 13 of this act.

(6) "Employer" shall mean the State of New Jersey, the county, municipality or political subdivision thereof which pays the particular policeman or fireman.

(7) "Service" shall mean service as a policeman or fireman paid for by an employer.

(8) "Creditable service" shall mean service rendered for which credit is allowed as provided under section 4 of this act.

(9) "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

(10) "Aggregate contributions" shall mean the sum of all the amounts, deducted from the compensation of a member or contributed by him or on his behalf, standing to the credit of his individual account in the annuity savings fund.

(11) "Annuity" shall mean payments for life derived from the aggregate contributions of a member.

(12) "Pension" shall mean payments for life derived from contributions by the employer.

(13) "Retirement allowance" shall mean the pension plus the annuity.

(14) "Earnable compensation" shall mean the full rate of the salary that would be payable to an employee if he worked the full normal working time for his position. In cases where salary includes maintenance, the retirement system shall fix the value of that part of the salary not paid in money which shall be considered under this act.

(15) "Average final compensation" shall mean the average annual salary upon which contributions are made for the three years of creditable service immediately preceding his retirement or death, or it shall mean the average annual salary for which contributions are made during any three fiscal years

of his or her membership providing the largest possible benefit to the member or his beneficiary.

(16) "Retirement" shall mean the termination of the member's active service with a retirement allowance granted and paid under the provisions of this act.

(17) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(18) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(19) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(20) "Beneficiary" shall mean any person receiving a retirement allowance or other benefit as provided by this act.

(21) "Child" shall mean a deceased member's or retirant's unmarried child (a) under the age of 18, or (b) 18 years of age or older and enrolled in a secondary school, or (c) under the age of 24 and enrolled in a degree program in an institution of higher education for at least 12 credit hours in each semester, provided that the member died in active service as a result of an accident met in the actual performance of duty at some definite time and place, and the death was not the result of the member's willful misconduct, or (d) of any age who, at the time of the member's or retirant's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

(22) "Parent" shall mean the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

(23) (a) "Widower," for employees of the State, means the man to whom a member or retirant was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), on the date of her death and who has not since remarried or established a domestic partnership. In the event of the payment of accidental death benefits, pursuant to section 10 of P.L.1944, c.255 (C.43:16A-10), the restriction concerning remarriage or establishment of a domestic partnership shall be waived.

(b) Subject to the provisions of paragraph (c) of this subsection, "widower," for employees of public employers other than the State, means the man to whom a member or retirant was married on the date of her death and who has not remarried.

(c) A public employer other than the State may adopt a resolution providing that the term "widower" as defined in paragraph (b) of this subsection shall include domestic partners as provided in paragraph (a) of this subsection.

(24) (a) "Widow," for employees of the State, means the woman to whom a member or retirant was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), on the date of his death and who has not since remarried or established a domestic partnership. In the event of the payment of accidental death benefits, pursuant to section 10 of P.L.1944, c.255 (C.43:16A-10), the restriction concerning remarriage or establishment of a domestic partnership shall be waived.

(b) Subject to the provisions of paragraph (c) of this subsection, "widow," for employees of public employers other than the State, means the woman to whom a member or retirant was married on the date of his death and who has not remarried.

(c) A public employer other than the State may adopt a resolution providing that the term "widow" as defined in paragraph (b) of this subsection shall include domestic partners as provided in paragraph (a) of this subsection.

(25) "Fiscal year" shall mean any year commencing with July 1, and ending with June 30, next following.

(26) "Compensation" shall mean the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday.

(27) "Department" shall mean any police or fire department of a municipality or a fire department of a fire district located in a township or a county police or park police department or the appropriate department of the State or instrumentality thereof.

(28) "Final compensation" means the compensation received by the member in the last 12 months of creditable service preceding his retirement or death.

(29) (Deleted by amendment, P.L.1992, c.78).

(30) (Deleted by amendment, P.L.1992, c.78).

(31) (a) "Spouse," for employees of the State, means the husband or wife, or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), of a member.

(b) Subject to the provisions of paragraph (c) of this subsection, "spouse," for employees of public employers other than the State, means the husband or wife of a member.

(c) A public employer other than the State may adopt a resolution providing that the term "spouse" as defined in paragraph (b) of this subsection shall include domestic partners as provided in paragraph (a) of this subsection.

44. Section 3 of P.L. 1973, c. 140 (C.43:6A-3) is amended to read as follows:

C.43:6A-3 Definitions.

3. As used in this act:

a. "Accumulated deductions" means the sum of all amounts, deducted from the compensation of a member or contributed by him or on his behalf, standing to the credit of his individual account in the annuity saving fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this amendatory and supplementary act.

c. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity computed on the basis of such mortality tables recommended by the actuary as the State House Commission adopts with regular interest.

d. "Beneficiary" means any person entitled to receive any benefit pursuant to the provisions of this act by reason of the death of a member or retiree.

e. "Child" means a deceased member's or retiree's unmarried child who is either (a) under the age of 18; (b) of any age who, at the time of the member's or retiree's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board; or (c) under the age of 21 and is attending school full time.

f. "Compensation" means the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the State for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular work schedule.

g. "Final salary" means the annual salary received by the member at the time of his retirement or death.

h. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.

i. "Medical board" means the board of physicians provided for in section 29 of this act.

j. "Member" means the Chief Justice and associate justices of the Supreme Court, judges of the Superior Court and tax court of the State of New Jersey required to be enrolled in the retirement system established by this act.

For purposes of this act, the person holding the office of standing master by appointment pursuant to N.J.S.2A:1-7 shall have the same privileges and obligations under this act as a judge of a Superior Court.

k. "Parent" means the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

l. "Pension" means payment for life derived from contributions by the State.

m. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension computed on the basis of such mortality tables recommended by the actuary as shall be adopted by the State House Commission with regular interest.

n. "Regular interest" means interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the State House Commission and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the commission shall not set the average percentage rate of increase applied to salaries below 6%.

o. "Retirant" means any former member receiving a pension or retirement allowance as provided by this act.

p. "Retirement allowance" means the pension plus the annuity.

q. "Retirement system" or "system" herein refers to the "Judicial Retirement System of New Jersey," which is the corporate name of the arrangement for the payment of pensions, retirement allowances and other benefits under the provisions of this act including the several funds placed under said system. By that name, all of its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

r. "Service" means public service rendered for which credit is allowed on the basis of contributions made by the State.

s. "Several courts" means the Supreme, Superior, and tax courts.

t. "Widow" means the woman to whom a member or a retirant was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least four years before the date of his death and to whom he continued to be married or a domestic partner until the date of his death. The

eligibility of such a widow to receive a survivor's benefit will be considered terminated by the marriage of, or establishment of a domestic partnership by, the widow subsequent to the member's or the retirant's death. In the event of accidental death the four-year qualification shall be waived. When used in this act, the term "widow" shall mean and include "widower" as may be necessary and appropriate to the particular situation.

u. "Widower" means the man to whom a member or a retirant was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least four years before the date of her death and to whom she continued to be married or a domestic partner until the date of her death. The eligibility of such a widower to receive a survivor's benefit will be considered terminated by the marriage of, or establishment of a domestic partnership by, the widower subsequent to the member's or retirant's death. In the event of accidental death the four-year qualification shall be waived.

v. "Spouse" means the husband or wife, or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), of a member or retirant.

45. N.J.S.18A:66-2 is amended to read as follows:

Definitions.

18A:66-2. As used in this article:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by or in behalf of the member, including interest credited to January 1, 1956, standing to the credit of the member's individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from the accumulated deductions of a member as provided in this article.

c. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this article.

d. "Compensation" means the contractual salary, for services as a teacher as defined in this article, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular school day or the regular school year.

e. "Employer" means the State, the board of education or any educational institution or agency of or within the State by which a teacher is paid.

f. "Final compensation" means the average annual compensation for which contributions are made for the three years of creditable service in New Jersey immediately preceding the member's retirement or death, or it shall mean the average annual compensation for New Jersey service for which

contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or the member's beneficiary.

g. "Fiscal year" means any year commencing with July 1, and ending with June 30, next following.

h. "Pension" means payments for life derived from appropriations made by the State or employers to the Teachers' Pension and Annuity Fund.

i. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, granted under the provisions of this article, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

j. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted to a member from the Teachers' Pension and Annuity Fund, computed on the basis of such mortality tables recommended by the actuary as the board of trustees adopts, with regular interest.

k. "Present-entrant" means any member of the Teachers' Pension and Annuity Fund who had established status as a "present-entrant member" of said fund prior to January 1, 1956.

l. "Rate of contribution initially certified" means the rate of contribution certified by the retirement system in accordance with N.J.S. 18A:66-29.

m. "Regular interest" shall mean interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.

n. "Retirement allowance" means the pension plus the annuity.

o. "School service" means any service as a "teacher" as defined in this section.

p. "Teacher" means any regular teacher, special teacher, helping teacher, teacher clerk, principal, vice-principal, supervisor, supervising principal, director, superintendent, city superintendent, assistant city superintendent, county superintendent, State Commissioner or Assistant Commissioner of Education, members of the State Department of Education who are certificated, unclassified professional staff and other members of the teaching or professional staff of any class, public school, high school, normal school, model school, training school, vocational school, truant reformatory school, or parental school, and of any and all classes or schools within the State conducted under the order and superintendence, and wholly or partly at the expense of the State

Board of Education, of a duly elected or appointed board of education, board of school directors, or board of trustees of the State or of any school district or normal school district thereof, and any persons under contract or engagement to perform one or more of these functions. It shall also mean any person who serves, while on an approved leave of absence from regular duties as a teacher, as an officer of a local, county or State labor organization which represents, or is affiliated with an organization which represents, teachers as defined in this subsection. No person shall be deemed a teacher within the meaning of this article who is a substitute teacher. In all cases of doubt the board of trustees shall determine whether any person is a teacher as defined in this article.

q. "Teachers' Pension and Annuity Fund," hereinafter referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this article, including the several funds placed under said system. By that name all its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

r. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any Army, Air Force or Navy of the Allies of the United States in World War I between July 14, 1914, and November 11, 1918, or who served in any Army, Air Force or Navy of the Allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions or emergencies, and who has presented to the retirement system evidence of such record of service in form and content satisfactory to said retirement system:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 18, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and December 31, 1946, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided;

(11) Korean conflict on or after June 23, 1950, and on or prior to January 31, 1955, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided; and provided further that any member classed as a veteran pursuant to this subsection prior to August 1, 1966, shall continue to be classed as a veteran, whether or not that person completed the 90-day service between said dates as herein provided;

(12) Lebanon crisis, on or after July 1, 1958, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(13) Vietnam conflict, on or after December 31, 1960, and on or prior to May 7, 1975, who shall have served at least 90 days in such active service, exclusive of any period of assignment (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which 90 days was served between said dates; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran, whether or not that person has completed the 90-day service as herein provided;

(14) Lebanon peacekeeping mission, on or after September 26, 1982, who has served in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before December 1, 1987 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(15) Grenada peacekeeping mission, on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 21, 1983 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(16) Panama peacekeeping mission, on or after December 20, 1989 or the date of inception of that mission, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before January 31, 1990 or the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability

shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(17) Operation "Desert Shield/Desert Storm" mission in the Arabian peninsula and the Persian Gulf, on or after August 2, 1990 or the date of inception of that operation, as proclaimed by the President of the United States or Congress, whichever date of inception is earliest, who has served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for a period, continuous or in the aggregate, of at least 14 days commencing on or before the date of termination of that mission, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest, in such active service; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided;

(18) Operation "Restore Hope" in Somalia, on or after December 5, 1992, or the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, who has served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before March 31, 1994; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person has completed the 14-day service as herein provided;

(19) Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, on or after November 20, 1995, who served in such active service in direct support of one or both of the operations for at least 14 days, continuously or in the aggregate, commencing on or before June 20, 1998, and (1) was deployed in that nation or in another area in the region, or (2) was on board a United States naval vessel operating in the Adriatic Sea, or (3) operated in airspace above the Republic of Bosnia and Herzegovina; provided that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not that person completed the 14-day service requirement.

(20) Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided; and

(21) Operation "Iraqi Freedom", on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of that operation, who served in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided.

"Veteran" also means any honorably discharged member of the American Merchant Marine who served during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits.

s. "Child" means a deceased member's unmarried child either (a) under the age of 18 or (b) of any age who, at the time of the member's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and the impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

t. (1) "Widower," for employees of the State, means the man to whom a member was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least five years before the date of her death and to whom she continued to be married or a domestic partner until the date of her death and who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of, or establishment of a domestic partnership by, the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(2) Subject to the provisions of paragraph (3) of this subsection, "widower," for employees of public employers other than the State, means the man to whom a member was married at least five years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower shall be considered terminated by marriage of the widower subsequent to the death of the member. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(3) A public employer other than the State may adopt a resolution providing that the term "widower" as defined in paragraph (2) of this subsection shall include domestic partners as provided in paragraph (1) of this subsection.

u. (1) "Widow," for employees of the State, means the woman to whom a member was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), at least five years before the date of his death and to whom he continued to be married or a domestic partner until the date of his death and who was receiving at least one-half of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow will be considered terminated by the marriage of, or establishment of a domestic partnership by, the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(2) Subject to the provisions of paragraph (3) of this subsection, "widow," for employees of public employers other than the State, means the woman to whom a member was married at least five years before the date of his death and to whom he continued to be married until the date of his death and who was receiving at least one-half of her support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widow shall be considered terminated by the marriage of the widow subsequent to the member's death. In the event of the payment of an accidental death benefit, the five-year qualification shall be waived.

(3) A public employer other than the State may adopt a resolution providing that the term "widower" as defined in paragraph (2) of this subsection shall include domestic partners as provided in paragraph (1) of this subsection.

v. "Parent" means the parent of a member who was receiving at least one-half of the parent's support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

w. "Medical board" means the board of physicians provided for in N.J.S.18A:66-56.

x. (1) "Spouse," for employees of the State, means the husband or wife, or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), of a member.

(2) Subject to the provisions of paragraph (1) of this subsection, "spouse," for employees of public employers other than the State, means the husband or wife of a member.

(3) A public employer other than the State may adopt a resolution providing that the term "spouse" as defined in paragraph (2) of this subsection shall include domestic partners as provided in paragraph (1) of this subsection.

46. Section 3 of P.L.1965, c.89 (C.53:5A-3) is amended to read as follows:

C.53:5A-3 Definitions relative to State Police Retirement System.

3. As used in this act:

a. "Aggregate contributions" means the sum of all the amounts, deducted from the salary of a member or contributed by him or on his behalf, standing to the credit of his individual account in the Annuity Savings Fund. Interest credited on contributions to the former "State Police Retirement and Benevolent Fund" shall be included in a member's aggregate contributions.

b. "Annuity" means payments for life derived from the aggregate contributions of a member.

c. "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of an annuity, computed upon the basis of such mortality tables recommended by the actuary as the board of trustees adopts and regular interest.

d. "Beneficiary" means any person entitled to receive any benefit pursuant to the provisions of this act by reason of the death of a member or retirant.

e. "Board of trustees" or "board" means the board provided for in section 30 of this act.

f. "Child" means a deceased member's or retirant's unmarried child either (a) under the age of 18 or (b) of any age who, at the time of the member's or retirant's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

g. "Creditable service" means service rendered for which credit is allowed on the basis of contributions made by the member or the State.

h. "Parent" means the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

i. "Final compensation" means the average compensation received by the member in the last 12 months of creditable service preceding his retirement or death. Such term includes the value of the member's maintenance allowance for this same period.

j. "Final salary" means the average salary received by the member in the last 12 months of creditable service preceding his retirement or death. Such term shall not include the value of the member's maintenance allowance.

- k. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.
- l. "Medical board" means the board of physicians provided for in section 30 of this act.
- m. "Member" means any full-time, commissioned officer, non-commissioned officer or trooper of the Division of State Police of the Department of Law and Public Safety of the State of New Jersey enrolled in the retirement system established by this act.
- n. "Pension" means payment for life derived from contributions by the State.
- o. "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed on the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees and regular interest.
- p. "Regular interest" means interest as determined by the State Treasurer, after consultation with the Directors of the Divisions of Investment and Pensions, the board of trustees and the actuary. It shall bear a reasonable relationship to the percentage rate of earnings on investments based on the market value of the assets but shall not exceed the assumed percentage rate of increase applied to salaries plus 3%, provided however that the board of trustees shall not set the average percentage rate of increase applied to salaries below 6%.
- q. "Retirant" means any former member receiving a retirement allowance as provided by this act.
- r. "Retirement allowance" means the pension plus the annuity.
- s. "State Police Retirement System of New Jersey," herein also referred to as the "retirement system" or "system," is the corporate name of the arrangement for the payment of retirement allowances and of the benefits under the provisions of this act including the several funds placed under said system. By that name, all of its business shall be transacted, its funds invested, warrants for moneys drawn, and payments made and all of its cash and securities and other property held. All assets held in the name of the former "State Police Retirement and Benevolent Fund" shall be transferred to the retirement system established by this act.
- t. "Surviving spouse" means the person to whom a member or a retirant was married, or a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), on the date of the death of the member or retirant. The dependency of such a surviving spouse will be considered terminated by the marriage of, or establishment of a domestic partnership by, the surviving spouse subsequent to the member's or the retirant's death, except that in the event of the payment of accidental death benefits, pursuant to section 14 of P.L.1965, c.89 (C.53:5A-14), the dependency of such a surviving spouse or domestic partner will not

be considered terminated by the marriage of, or establishment of a domestic partnership by, the surviving spouse subsequent to the member's death.

u. "Compensation" for purposes of computing pension contributions means the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the State for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday or shift.

C.17:48-6bb Hospital service corporation to offer coverage for domestic partner.

47. A hospital service corporation that provides hospital or medical expense benefits under a contract that is delivered, issued, executed or renewed in this State or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to those contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7aa Medical service corporation to offer coverage for domestic partner.

48. A medical service corporation that provides hospital or medical expense benefits under a contract that is delivered, issued, executed or renewed in this State or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to those contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-35.26 Health service corporation to offer coverage for domestic partner.

49. A health service corporation that provides hospital or medical expense benefits under a contract that is delivered, issued, executed or renewed in this State or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to those contracts in which the health service corporation has reserved the right to change the premium.

C.17B:26-2.1x Individual health insurer to offer coverage for domestic partner.

50. An individual health insurer that provides hospital or medical expense benefits under a policy that is delivered, issued, executed or renewed in this State or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.17B:27-46.1bb Group health insurer to offer coverage for domestic partner.

51. A group health insurer that provides hospital or medical expense benefits under a policy that is delivered, issued, executed or renewed in this State or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.26:2J-4.27 HMO to offer coverage for domestic partner.

52. Every health maintenance organization contract that is delivered, issued, executed or renewed in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to an enrollee for an enrollee's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

The provisions of this section shall apply to contracts in which the health maintenance organization has reserved the right to change the schedule of charges.

C.17B:27A-7.9 Individual health benefits plan to offer coverage for domestic partner.

53. Every individual health benefits plan that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.), or approved for issuance

or renewal in this State on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

The provisions of this section shall apply to all policies or contracts in which the carrier has reserved the right to change the premium.

C.17B:27A-19.12 Small employer health benefits plan to offer coverage for domestic partner.

54. Every small employer health benefits plan that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.), or approved for issuance or renewal in this State on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

The provisions of this section shall apply to all policies or contracts in which the carrier has reserved the right to change the premium.

C.17:48C-8.2 Dental service corporation to offer coverage for domestic partner.

55. Every dental service corporation contract that is delivered, issued, executed or renewed in this State pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.) or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to a covered person for a covered person's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to all contracts in which the dental service corporation has reserved the right to change the premium.

C.17:48D-9.5 Dental plan organization to offer coverage for domestic partner.

56. Every dental plan organization contract that is delivered, issued, executed or renewed in this State pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.) or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L.2003, c.246 (C.26:8A-1 et al.), under which dependent coverage is available, shall offer dependent coverage to an enrollee for an enrollee's domestic partner. For the purposes of this section, "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

This section shall apply to all contracts in which the dental plan organization has reserved the right to change the premium.

C.34:11A-20 Regulations relative to employer providing health benefits plan and domestic partners.

57. a. An employer that provides a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S-2) to its employees and their dependents in this State may require that an employee contribute a portion or the full amount of the cost of dependent coverage under the plan for the employee's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

b. Nothing in P.L.2003, c.246 (C.26:8A-1 et al.) shall be construed to require an employer to provide dependent coverage for an employee's domestic partner.

c. Notwithstanding any other provisions of law to the contrary, the provisions of subsections a. and b. of this section shall not be deemed to be an unlawful discrimination under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

C.26:8A-11 Applicability of act.

58. a. The provisions of sections 41 through 56, inclusive, of P.L.2003, c. 246 shall only apply in the case of two persons who are of the same sex and have established a domestic partnership pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

b. Notwithstanding any other provisions of law to the contrary, the provisions of subsection a. of this section shall not be deemed to be an unlawful discrimination under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

C.26:8A-12 Rules, regulations; responsible agencies.

59. a. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 1 through 10 and 13 through 35 of this act.

b. The Commissioner of Banking and Insurance, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 47 through 52, 55 and 56 of this act.

c. The New Jersey Individual Health Coverage Program Board, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 53 of this act.

d. The New Jersey Small Employer Health Benefits Program Board, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 54 of this act.

60. This act shall take effect on the 180th day after enactment, except that the Commissioners of Health and Senior Services and Banking and Insurance may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act; and the provisions of sections 47 through 56 shall apply to policies or contracts issued or renewed on or after the effective date.

Approved January 12, 2004.

CHAPTER 247

AN ACT concerning late payment charges for service by utilities and cable television companies and supplementing Title 48 of the Revised Statutes.

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

C.48:3-2.3 Assessment of late charge on unpaid utility bill, conditions.

1. a. Notwithstanding the provisions of any law, rule, regulation or order to the contrary, the board shall not allow a utility to assess a late payment charge on an unpaid bill unless such charge is provided for in the utility's applicable rate schedule approved by the board. A late payment charge shall not be approved by the board if it is applicable to bills less than 25 days after rendering. A late payment charge shall not be approved for a rate schedule applicable to a State, county or municipal government entity or any residential ratepayer.

As used in this subsection, a "utility" means a public utility, as public utility is defined in R.S.48:2-13 and including a natural gas pipeline utility as natural gas pipeline utility is defined in section 2 of P.L.1952, c.166 (C.48:10-3), and a municipally-operated utility, insofar as the board's jurisdiction is extended to the municipally-operated utility under any applicable law.

b. The board may 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 subsection a. of this section.

C.48:5A-11.10 Cable television company, specific late fee, method of calculation.

2. a. Notwithstanding the provisions of any law, rule, regulation or order to the contrary, the board shall not allow a cable television company that provides cable television reception service within this State and is subject to the jurisdiction of the board, to approve a specified due date for payments for such service that is less than 15 days from the date of the bill. In the event a cable television company imposes an additional fee, charge or penalty to a subscriber for billing balances which are considered past due or late, the

cable television company shall clearly specify the amount of the fee, charge or penalty on the subscriber's bill. The cable television company shall also specify the method of calculation of the fee, charge or penalty on the subscriber's bill. A cable television company shall not impose an additional fee, charge or penalty on any account balance of such subscriber that is less than 30 days past due or late.

b. The board may 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 subsection a. of this section.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 248

AN ACT concerning municipal electric power systems and rural electric cooperatives and amending P.L.1999, c.23.

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

1. Section 39 of P.L.1999, c.23 (C.48:3-88) is amended to read as follows:

C.48:3-88 Status of municipal systems, rural electric cooperatives, definition.

39. a. (1) A municipal system, or a rural electric cooperative, that was established prior to the effective date of P.L.1999, c.23 (C.48:3-49 et seq.), shall not be subject to the provisions of P.L.1999, c.23 except as provided in paragraph (2) of subsection a. of this section or subsection b. of this section.

(2) The governing body of a municipality that operates such a municipal system, or the board of directors of a rural electric cooperative, may require that system or cooperative, as the case may be, to implement retail choice.

b. (1) A municipal system subject to this section that serves retail electric power customers solely within the corporate limits of its municipality and that, on or after the effective date of P.L.2003, c.248, is authorized by the governing body of the municipality to provide electric generation service beyond those corporate limits shall become licensed as an electric power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the extent of the provision of such electric generation service.

(2) A municipal system subject to this section that serves retail electric power customers beyond the corporate limits of its municipality and that, on or after the effective date of P.L.2003, c.248, is authorized by the governing body of the municipality to provide electric generation service beyond its franchise area shall become licensed as an electric power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the extent of the provision of such electric generation service.

(3) A rural electric cooperative subject to this section that, on or after the effective date of P.L.2003, c.248, is authorized by its board of directors to provide electric generation service beyond its franchise area shall become licensed as an electric power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the extent of the provision of such electric generation service.

(4) A municipal system or rural electric cooperative that becomes licensed as an electric power supplier and otherwise subject to the provisions of P.L.1999, c.23 (C.48:3-49 et seq.) pursuant to the provisions of this section shall, in conjunction with the provision of electric generation service, provide for retail choice for the retail electric power customers within its prior service or franchise area, as appropriate.

c. For the purposes of this section, "municipal system" means a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

2. Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to read as follows:

C.48:3-91 Government aggregator.

42. a. Pursuant to the provisions of sections 42 through 45 of this act, a government aggregator may obtain: electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities or with other government aggregators; and a government aggregator that is a county or municipality may contract for the provision of electric generation service or gas supply service, either separately or bundled, for the business and residential customers within the territorial jurisdiction of the government aggregator. Such a government aggregator may combine the need for its own facilities for electric generation service or gas supply service with that of business and residential customers.

b. A government aggregator shall purchase electric generation service and gas supply service only from licensed electric power suppliers and licensed gas suppliers.

c. The government aggregator shall enter into the contract for electric generation service, electric related service, gas supply service or gas related service for its own facilities or with other government aggregators under the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.), as applicable.

d. Nothing in this act shall preclude the State government or any State independent authority or State college from exercising authority to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities on an aggregated basis.

e. Nothing in this section shall preclude a government aggregator from aggregating its own accounts for regulated utility services, including basic generation or gas service.

f. Nothing in this act shall preclude any interstate authority or agency from exercising authority to obtain electric generation service or gas supply service, either separately or bundled, for its own facilities in this State, including tenants in this State and other utility customers in this State at such facilities, on an aggregated basis. By exercising such authority, no interstate authority or agency shall be deemed to be a public utility pursuant to R.S. 48:1-1 et seq.; provided, however, that nothing in this act shall be construed to exempt such authority or agency from the payment of the market transition charge or its equivalent, imposed pursuant to section 13 of this act, the transition bond charge or its equivalent, imposed pursuant to section 18 of this act and any societal benefits charge or its equivalent, which may be imposed pursuant to section 12 of this act, to the same extent that other customers of an electric public utility pay such charges in conjunction with any transmission and distribution service provided by an electric public utility to the authority or agency.

g. Notwithstanding any other provision of this act to the contrary, a private aggregator that is a private institution of higher education may enter into a contract with a licensed electric power supplier other than a municipal system or rural electric cooperative for the provision of electric generation service or electric related service, either separately or bundled, including any private aggregator that is a four-year private institution of higher education which is located within the jurisdiction of a municipal system, or within the franchise area of a rural electric cooperative, as the case may be. The right hereunder of a four-year private institution of higher education to enter into a contract with a licensed electric power supplier other than the municipal system or rural electric cooperative shall be subject to the condition that the municipal

system or rural electric cooperative shall have the right of first refusal to offer a competitive, market-based price for electric power. For the purposes of this subsection, "municipal system" means a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

h. The "New Jersey School Boards Association," established pursuant to N.J.S.18A:6-45, is authorized to serve as a government aggregator to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, in accordance with the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., for members of the association who wish to voluntarily participate.

i. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim standards governing government energy aggregation programs. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

j. No government aggregator shall implement the provisions of section 42, 43, 44, or 45 of this act, as appropriate, prior to the starting date of retail competition pursuant to section 5 of this act, or the date on which the board adopts interim standards pursuant to subsection i. of this section, whichever is earlier.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 249

AN ACT concerning parole conditions and amending P.L.1979, c.441.

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

1. Section 15 of P.L.1979, c.441 (C.30:4-123.59) is amended to read as follows:

C.30:4-123.59 Legal custody and supervision; conditions.

15. a. Each adult parolee shall at all times remain in the legal custody of the Commissioner of Corrections and under the supervision of the State Parole

Board and each juvenile parolee shall at all times remain in the legal custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), except that the Commissioner of Corrections or the Executive Director of the Juvenile Justice Commission, after providing notice to the Attorney General, may consent to the supervision of a parolee by the federal government pursuant to the Witness Security Reform Act, Pub.L.98-473 (18 U.S.C. s.3251 et seq.). An adult parolee, except those under the Witness Security Reform Act, shall remain under the supervision of the State Parole Board and in the legal custody of the Department of Corrections, and a juvenile parolee, except those under the Witness Security Reform Act, shall remain under the supervision of the Juvenile Justice Commission, as appropriate, in accordance with the policies and rules of the board.

b. Each parolee shall agree, as evidenced by his signature to abide by specific conditions of parole established by the appropriate board panel which shall be enumerated in writing in a certificate of parole and shall be given to the parolee upon release. Such conditions shall include, among other things, a requirement that the parolee conduct himself in society in compliance with all laws and refrain from committing any crime, a requirement that the parolee will not own or possess any firearm as defined in subsection f. of N.J.S.2C:39-1 or any other weapon enumerated in subsection r. of N.J.S.2C:39-1, a requirement that the parolee refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.2C:35-2 and N.J.S.2C:35-11, a requirement that the parolee obtain permission from his parole officer for any change in his residence, and a requirement that the parolee report at reasonable intervals to an assigned parole officer. In addition, based on prior history of the parolee or information provided by a victim or a member of the family of a murder victim, the member or board panel certifying parole release pursuant to section 11 of P.L.1979, c.441 (C.30:4-123.55) may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior. Such special conditions may include, among other things, a requirement that the parolee make full or partial restitution, the amount of which restitution shall be set by the sentencing court upon request of the board. In addition, the member or board panel certifying parole release may, giving due regard to a victim's request, impose a special condition that the parolee have no contact with the victim, which special condition may include, but need not be limited to, restraining the parolee from entering the victim's residence, place of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way. Further, the member, board panel or board certifying parole release may impose a special condition that the person shall

not own or possess an animal for an unlawful purpose or to interfere in the performance of duties by a parole officer.

c. The appropriate board panel may in writing relieve a parolee of any parole conditions, and may permit a parolee to reside outside the State pursuant to the provisions of the Uniform Act for Out-of-State Parolee Supervision (N.J.S.2A:168-14 et seq.), the Interstate Compact on Juveniles, P.L.1955, c.55 (C.9:23-1 to 9:23-4), and, with the consent of the Commissioner of the Department of Corrections or the Executive Director of the Juvenile Justice Commission after providing notice to the Attorney General, the federal Witness Security Reform Act, if satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State. The appropriate board panel may revoke such permission, except in the case of a parolee under the Witness Security Reform Act, or reinstate relieved parole conditions for any period of time during which a parolee is under its jurisdiction.

d. The appropriate board panel may parole an inmate to any residential facility funded in whole or in part by the State if the inmate would not otherwise be released pursuant to section 9 of P.L.1979, c.441 (C.30:4-123.53) without such placement. But if the residential facility provides treatment for mental illness or mental retardation, the board panel only may parole the inmate to the facility pursuant to the laws and admissions policies that otherwise govern the admission of persons to that facility, and the facility shall have the authority to discharge the inmate according to the laws and policies that otherwise govern the discharge of persons from the facility, on 10 days' prior notice to the board panel. The board panel shall acknowledge receipt of this notice in writing prior to the discharge. Upon receipt of the notice the board panel shall resume jurisdiction over the inmate.

e. Parole officers shall provide assistance to the parolee in obtaining employment, education or vocational training or in meeting other obligations to assure the parolee's compliance with meeting legal requirements related to sex offender notification, address changes and participation in rehabilitation programs as directed by the assigned parole officer.

f. The board panel on juvenile commitments and the assigned parole officer shall insure that the least restrictive available alternative is used for any juvenile parolee.

g. If the board has granted parole to any inmate from a State correctional facility or juvenile facility and the court has imposed a fine on such inmate, the appropriate board panel shall release such inmate on condition that the parolee make specified fine payments to the State Parole Board or the Juvenile Justice Commission. For violation of such conditions, or for violation of a special condition requiring restitution, parole may be revoked only for refusal or failure to make a good faith effort to make such payment.

h. Upon collection of the fine the same shall be paid over by the Department of Corrections or by the Juvenile Justice Commission to the State Treasury.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 250

AN ACT concerning the collection of dental benefits and supplementing P.L.1968, c.305 (C.17:48C-1 et seq.), P.L.1979, c.478 (C.17:48D-1 et seq.) and P.L.1985, c.236 (C.17:48E-1 et seq.).

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

C.17:48C-8.3 Payment of out-of-network benefits by dental service corporation.

1. a. (1) A dental service corporation that makes a dental benefit payment to a covered person for services rendered by an out-of-network dentist shall issue the payment to the covered person in accordance with the time frames set forth in section 8 of P.L.1999, c.154 (C.17:48C-8.1), and shall, within three days of issuing the payment, provide a notification to the out-of-network dentist of the amount and date of the payment and the services for which the payment was made.

(2) In the case of a dental service corporation that supplies an administrative services only contract and makes a dental benefit payment to a covered person for services rendered by an out-of-network dentist under that contract, paragraph (1) of this subsection shall not apply, but the dental service corporation shall, within three days of issuing the payment, provide a notification to the out-of-network dentist of the amount and date of the payment.

b. A covered person may enter into an agreement with an out-of-network dentist to sign over the dental benefit payment received from the dental service corporation to the dentist. The agreement shall:

- (1) be in writing;
- (2) be signed by the person who is entitled to receive the dental benefit payment from the dental service corporation;
- (3) be retained by the dentist for at least six years following the date of the most recent payment from the covered person; and
- (4) give the covered person at least 10 business days within which to sign over the dental benefit to the dentist.

c. A covered person who agrees to sign over a dental benefit payment in accordance with this section, shall comply with the terms of the agreement; except that, if the covered person owes the out-of-network dentist less than the amount of the dental benefit payment, the covered person shall pay the dentist the balance owed to the dentist.

d. A covered person who fails to sign over the dental benefit payment in accordance with this section, shall be liable to the out-of-network dentist for payment of attorney fees and costs reasonably incurred by the dentist in enforcing the agreement established pursuant to this section.

C.17:48D-9.6 Payment of out-of-network benefits by dental plan organization.

2. a. (1) A dental plan organization that makes a dental benefit payment to an enrollee for services rendered by an out-of-network dentist shall issue the payment to the enrollee in accordance with the time frames set forth in section 9 of P.L.1999, c.154 (C.17:48D-9.4), and shall, within three days of issuing the payment, provide a notification to the out-of-network dentist of the amount and date of the payment and the services for which the payment was made.

(2) In the case of a dental plan organization that supplies an administrative services only contract and makes a dental benefit payment to an enrollee for services rendered by an out-of-network dentist under that contract, paragraph (1) of this subsection shall not apply, but the dental plan organization shall, within three days of issuing the payment, provide a notification to the out-of-network dentist of the amount and date of the payment.

b. An enrollee may enter into an agreement with an out-of-network dentist to sign over the dental benefit payment received from the dental plan organization to the dentist. The agreement shall:

- (1) be in writing;
- (2) be signed by the person who is entitled to receive the dental benefit payment from the dental plan organization;
- (3) be retained by the dentist for at least six years following the date of the most recent payment from the enrollee; and
- (4) give the enrollee at least 10 business days within which to sign over the dental benefit to the dentist.

c. An enrollee who agrees to sign over a dental benefit payment in accordance with this section, shall comply with the terms of the agreement; except that, if the enrollee owes the out-of-network dentist less than the amount of the dental benefit payment, the enrollee shall pay the dentist the balance owed to the dentist.

d. An enrollee who fails to sign over the dental benefit payment in accordance with this section, shall be liable to the out-of-network dentist for

payment of attorney fees and costs reasonably incurred by the dentist in enforcing the agreement established pursuant to this section.

C.17:48E-10.2 Payment of out-of-network dental benefits by health service corporation.

3. a. (1) A health service corporation that makes a dental benefit payment to a covered person for services rendered by an out-of-network dentist shall issue the payment to the covered person in accordance with the time frames set forth in section 4 of P.L.1999, c.154 (C.17:48E-10.1), and shall, within three days of issuing the payment, provide a notification to the out-of-network dentist of the amount and date of the payment and the services for which the payment was made.

(2) In the case of a health service corporation that supplies an administrative services only contract and makes a dental benefit payment to a covered person for services rendered by an out-of-network dentist under that contract, paragraph (1) of this subsection shall not apply, but the health service corporation shall, within three days of issuing the payment, provide a notification to the out-of-network dentist of the amount and date of the payment.

b. A covered person may enter into an agreement with an out-of-network dentist to sign over the dental benefit payment received from the health service corporation to the dentist. The agreement shall:

- (1) be in writing;
- (2) be signed by the person who is entitled to receive the dental benefit payment from the health service corporation;
- (3) be retained by the dentist for at least six years following the date of the most recent payment from the covered person; and
- (4) give the covered person at least 10 business days within which to sign over the dental benefit to the dentist.

c. A covered person who agrees to sign over a dental benefit payment in accordance with this section, shall comply with the terms of the agreement; except that, if the covered person owes the out-of-network dentist less than the amount of the dental benefit payment, the covered person shall pay the dentist the balance owed to the dentist.

d. A covered person who fails to sign over the dental benefit payment in accordance with this section, shall be liable to the out-of-network dentist for payment of attorney fees and costs reasonably incurred by the dentist in enforcing the agreement established pursuant to this section.

4. This act shall take effect on the 60th day after enactment

Approved January 14, 2004.

CHAPTER 251

AN ACT concerning the Six Mile Run Reservoir site, and amending and supplementing P.L.1981, c.262.

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

1. Section 3 of P.L.1981, c.262 (C.58:1A-3) is amended to read as follows:

C.58:1A-3 Definitions.

3. As used in the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.), P.L.1993, c.202 (C.58:1A-7.3 et al.) and P.L.2003, c.251 (C.58:1A-13.1 et al.):

- a. "Commissioner" means the Commissioner of the Department of Environmental Protection or the commissioner's designated representative;
- b. "Consumptive use" means any use of water diverted from surface or ground waters other than a nonconsumptive use as defined in this section;
- c. "Department" means the Department of Environmental Protection;
- d. "Diversion" means the taking or impoundment of water from a river, stream, lake, pond, aquifer, well, other underground source, or other water body, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere;
- e. "Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality;
- f. "Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a water supply facility, political subdivision of the State and any state, or interstate agency or federal agency;
- g. "Waters" or "waters of the State" means all surface waters and ground waters in the State;
- h. "Safe or dependable yield" or "safe yield" means that maintainable yield of water from a surface or ground water source or sources which is available continuously during projected future conditions, including a repetition of the most severe drought of record, without creating undesirable effects, as determined by the department;
- i. "Aquaculture" means the propagation, rearing and subsequent harvesting of aquatic species in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection

from predators. "Aquaculture" shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation;

j. "Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture;

k. "Six Mile Run Reservoir Site" means the land acquired by the State for development of the Six Mile Run Reservoir in Franklin Township, Somerset County, as identified by the Eastern Raritan Feasibility Study and the New Jersey Statewide Water Supply Plan prepared and adopted by the department pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13).

2. Section 13 of P.L.1981, c.262 (C.58:1A-13) is amended to read as follows:

C.58:1A-13 New Jersey Statewide Water Supply Plan.

13. a. The department shall prepare and adopt the New Jersey Statewide Water Supply Plan, which plan shall be revised and updated at least once every five years.

b. The plan shall include, but need not be limited to, the following:

(1) An identification of existing Statewide and regional ground and surface water supply sources, both interstate and intrastate, and the current usage thereof;

(2) Projections of Statewide and regional water supply demands for the duration of the plan;

(3) Recommendations for improvements to existing State water supply facilities, the construction of additional State water supply facilities, and for the interconnection or consolidation of existing water supply systems;

(4) Recommendations for the diversion or use of fresh surface or ground waters and saline surface or ground waters for aquaculture purposes;

(5) Recommendations for legislative and administrative actions to provide for the maintenance and protection of watershed areas; and

(6) Identification of lands purchased by the State for water supply facilities that currently are not actively used for water supply purposes, including, but not limited to, the Six Mile Run Reservoir Site, with recommendations as to the future use of these lands for water supply purposes within or outside of the planning horizon for the plan.

c. Prior to adopting the plan, including any revisions and updates thereto, the department shall:

(1) Prepare and make available to all interested persons a copy of the proposed plan or proposed revisions and updates to the current plan;

(2) Conduct public meetings in the several geographic areas of the State on the proposed plan or proposed revisions and updates to the current plan; and

(3) Consider the comments made at these meetings, make any revisions to the proposed plan or proposed revisions and updates to the current plan as it deems necessary, and adopt the plan.

C.58:1A-13.1 Maintenance of State-owned lands in the Six Mile Reservoir Site and other unused lands.

3. a. The department shall take actions to assure that State-owned lands identified pursuant to paragraph (6) of subsection b. of section 13 of P.L. 1981, c.262 (C.58:1A-13) shall be maintained in a manner to ensure that their future use for water supply purposes is not materially impaired or increased significantly in cost.

b. Until State-owned lands identified pursuant to paragraph (6) of subsection b. of section 13 of P.L. 1981, c.262 (C.58:1A-13) are used for water supply purposes, these lands shall be dedicated to the protection of natural resources, including grasslands, wetlands, forests and reforestation, ecosystem improvement, natural ground water recharge, and agricultural purposes that are compatible with natural resource protection and water quality protection. The use of these lands shall be subject to the following conditions:

(1) The lands may be used for open space recreational purposes to the extent that these uses do not impair natural or historic resource protection;

(2) Except for the construction of walking paths or bicycle paths, or other structures for passive recreational uses in accordance with the purposes of this act, permanent structures and other impervious cover shall be less than two percent of the total land area. Permanent structures or extensive impervious cover shall not be constructed on those lands that would be used for water supply purposes;

(3) The use of these lands for non-water supply purposes shall not impair the planned water supply use in any material way. Active recreation shall be allowed only outside the perimeter of any proposed water supply facilities, including, but not limited to, reservoirs, pipelines, canals, pumping stations or dams;

(4) Passive recreation may be allowed within the perimeter of any proposed water supply facility; and

(5) Agricultural uses shall be allowed in the most suitable sites based on soils, water quality protection and site configuration and shall be sited in a manner that protects the agricultural uses from significant interference and damage from recreational uses. All agricultural activities shall be conducted in a manner that will protect natural resources and water quality, as determined by the department in conjunction with the Department of Agriculture.

C.58:1A-13.2 Existing lease, agreement unaffected concerning unused lands.

4. The provisions of section 3 of P.L.2003, c.251 (C.58:1A-13.1) shall not abrogate or in any way affect the terms or conditions of any lease or other agreement that is in effect on the date of enactment between the department and any party relative to the management of land identified pursuant to paragraph (6) of subsection b. of section 13 of P.L.1981, c.262 (C.58:1A-13), nor shall the provisions of P.L.2003, c.251 (C.58:1A-13.1 et al.) restrict the authority of the department to enter into or extend a lease or agreement to manage those lands, provided that any lease or agreement is consistent with the provisions of section 3 of P.L.2003, c.251 (C.58:1A-13.1).

5. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 252

AN ACT concerning licensed check cashers and amending P.L.1993, c.383.

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

1. Section 2 of P.L.1993, c.383 (C.17:15A-31) is amended to read as follows:

C.17:15A-31 Definitions.

2. As used in this act:

"Applicant" means a person who has applied or is in the process of applying for a license pursuant to this act.

"Automated cash machine" means an unmanned communications terminal which dispenses cash, traveler's checks or both; does not accept deposits; and through which transactions with banking institutions are consummated.

"Automated check cashing machine" means an unmanned communications terminal which only cashes checks for a fee.

"Check" includes a check, draft, money order, negotiable order of withdrawal and similar types of negotiable instruments.

"Commissioner" means the Commissioner of Banking and Insurance.

"Controlling interest" means ownership, control or interest in 25% or more of the outstanding and issued voting stock of the check cashing business.

"Customer" means any person who seeks to have a check cashed by a licensee but does not include the maker of a check payable to another person.

"Department" means the Department of Banking and Insurance.

"Fee" includes any fee, charge, cost, expense, or other consideration.

"License" means a license issued pursuant to this act and held by a licensee, which license authorizes the licensee to cash checks for a fee as provided pursuant to this act.

"Licensee" means a person who holds, or who should hold, a license pursuant to this act.

"Limited branch office" means a private premises where a licensee maintains and makes available to the particular group specified in the authorization, and to that group only, the facilities for cashing checks, drafts, or money orders on the designated premises for no more than two days of each week as designated in the authorization pursuant to subsection c. of section 12 of this act and also includes the premises where payroll services are provided.

"Mobile office" means any vehicle or other moveable means from which the business of cashing checks is conducted.

"Natural person" does not include a payee identified on the payee line of a check as a partnership, professional association, company, corporation, or other business entity.

"Office" includes a principal office and a full branch office.

"Payroll service" means a service provided, pursuant to a written agreement, by a licensed check casher to an employer in which the employer pays a fixed fee or rate for the on-site delivery of payroll or cashing of payroll checks issued to its employees, at no cost to the employees.

"Person" has the meaning given that word in R.S.1:1-2.

"Substantial stockholder" means any person who beneficially owns or controls more than 10% of the outstanding voting shares of an applicant or a licensee.

2. Section 6 of P.L.1993, c.383 (C.17:15A-35) is amended to read as follows:

C.17:15A-35 Contents of application.

6. The application for a license shall include, but not be limited to, the following:

- a. The name, age, business address, residence and present and previous occupations of each applicant or licensee and of each officer, owner, director, partner, and substantial stockholder of the check cashing business to be licensed;
- b. The name and business address of each manager of each office, mobile office or limited branch office that the applicant proposes to operate;
- c. The address of each stationary site, if the check cashing business, or any portion thereof, is to be conducted from a stationary site or sites;

d. The New Jersey motor vehicle registration number or other identification of the mobile office and the exact location or locations, if more than one, at which the applicant proposes to operate the mobile office, if the check cashing business, or any portion thereof, is to be conducted from a mobile office;

e. Any other information that the commissioner may reasonably require;

f. All licensees shall have an affirmative obligation to advise the commissioner in writing within five days of any change in the information required under subsections a., c. and d. of this section; and

g. An applicant's customer information, customer lists, authorizations and customer contracts submitted to or obtained by the department in connection with an application for licensure for a limited branch office shall be confidential and not public records subject to public access, inspection or copying under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning access to public records. The applicant's name and address and an application for licensure for a limited branch office shall be public records. Nothing contained in this subsection shall restrict the authority of the department or any other governmental entity to access documents, whether or not deemed public records, submitted in connection with an application for a limited branch office license.

3. Section 8 of P.L.1993, c.383 (C.17:15A-37) is amended to read as follows:

C.17:15A-37 Required capital, net worth, liquid assets.

8. An applicant shall prove, in a manner and form satisfactory to the commissioner, that the applicant has available for the operation of its check cashing business at each office, mobile office or automated check cashing machine location, capital or net worth of at least \$50,000, and has available for the operation of its check cashing business at each office, mobile office or location, liquid assets of at least \$50,000.

4. Section 11 of P.L.1993, c.383 (C.17:15A-40) is amended to read as follows:

C.17:15A-40 Valid license, fee, civil actions.

11. a. A license shall be valid until surrendered by the licensee, or unless revoked or suspended pursuant to this act.

b. Each licensee shall pay to the department a biennial license fee of not more than \$2,000 for each office and mobile office it maintains. There shall not be a biennial license fee for a limited branch office. The fee shall be due on January 1 of each alternate calendar year following the effective date of this act. When the initial license or certificate is issued in the second year of the biennial period, the fee shall be an amount equal to one-half the

fee for the biennial period. The initial license fee for a limited branch office shall not exceed \$100.

c. A licensee may bring a civil action in Superior Court against another licensee, or against a depository institution subject to subsection b. of section 21 of P.L.1993, c.383 (C.17:15A-50), as amended, or subsection c. of section 21 of P.L.1993, c.383 (C.17:15A-50), as amended, for violating any of the following provisions, if that violation has an impact on the check cashing business of the licensee bringing the action: (1) section 3 of P.L.1993, c.383 (C.17:15A-32); (2) the requirements set forth in paragraph (6) of subsection d. of section 12 of P.L.1993, c. 383 (C.17:15A-41); (3) subsection e. of section 12 of P.L.1993, c. 383 (C.17:15A-41); (4) subsection f. of section 18 of P.L.1993, c.383 (C.17:15A-47); (5) subsection b. of section 21 of P.L.1993, c.383 (C.17:15A-50); or (6) subsection c. of section 21 of P.L.1993, c.383 (C.17:15A-50). Nothing contained in this subsection shall be construed to restrict, limit or alter in any way the commissioner's authority to enforce the provisions of "The Check Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et seq.) or any other law.

d. If a licensee has not provided check cashing services during normal business hours at the location specified in the license for a period of 180 consecutive days or more, and if no application for renewal of the license or relocation of the licensed check casher is or shall have been filed prior to expiration of that 180-day period, the department may, after notice to the licensee and opportunity to be heard, revoke the license or for good cause shown, the department may extend the 180 day period.

5. Section 15 of P.L.1993, c.383 (C.17:15A-44) is amended to read as follows:

C.17:15A-44 Responsibilities of licensee.

15. A licensee shall:

a. Conspicuously display at each office, limited branch office or mobile office it operates the original license, certificate or branch authorization, as appropriate, issued by the commissioner.

b. Conspicuously display all signs and notifications which the commissioner may require.

c. Provide each customer, at the time of a transaction, with a record of each transaction as specified by regulation.

d. Produce a photographic record, on such equipment as the commissioner may prescribe, of all of the checks cashed at the place of business and maintain a true copy of each such record.

e. Endorse each check cashed with the actual name under which the licensee is doing business and legibly write or stamp the words "Licensed Casher of Checks" immediately after or below the licensee's name.

f. Conduct all check cashing business through a bank account or accounts which are used solely for that purpose, and which have been identified as such to the department.

g. Inform the department if any bank account number changes or if any bank account is closed.

h. Maintain adequate records of its check cashing business as prescribed by the commissioner by regulation.

i. Retain for five years essential records, and retain all other records for a shorter period as prescribed by the commissioner by regulation. Such records shall be separate from the records of other businesses in which the licensee may be engaged. Although separate records are required, it is not required that the licensee's check cashing business have a different legal identity from other businesses in which the licensee is engaged.

j. Suspend for at least six months the check cashing privileges of any customer who cashes, in any one calendar year, more than three checks which are returned by the payor bank because of insufficient funds, and notify the department in writing of the name of such customer and the action taken, except that for purposes of this subsection two or more checks of a single maker which are returned because of insufficient funds shall be counted as one check provided they were cashed the same day and deposited in the licensee's bank account on the same banking day.

k. Maintain at all times a capital or net worth of at least \$50,000 for the operation of the licensee's check cashing business at each office, mobile office and automated check cashing machine location, and maintain at all times liquid assets of at least \$50,000 for the operation of the licensee's check cashing business at each office, mobile office and automated check cashing machine location.

l. (1) Maintain on its premises, a record keeping system by which a licensee may track, and provide for inspection at the request of the commissioner, checks which the licensee cashed and which were made payable to a payee other than a natural person and checks which the licensee cashed in the amount of \$2,500.00 or more.

(2) The record keeping system required pursuant to paragraph (1) of this subsection l. shall include, but not be limited to, the following information:

- (a) the date of the transaction;
- (b) the name of the payee;
- (c) the federal tax payer identification number of the payee;
- (d) the face amount of the check;
- (e) the date of the check;
- (f) the name or names of those presenting the check for payment;
- (g) the name of the financial institution on which the check is drawn and the financial institution's transit routing number;

(h) the amount of the fee charged; and
(i) a photograph, photostat, duplicate, microfilm, microfiche or any other reproduction of the front and back of the fully endorsed check.

(3) The record keeping system shall be made available to any State or federal law enforcement agency upon written request and without necessity of subpoena.

m. File with the Attorney General of New Jersey a duplicate copy of any report a licensee is required to file regarding business conducted in this State pursuant to 31 U.S.C.s.5311 et seq. and 31 C.F.R.s.103 et seq.

n. Supervise employees engaged in the operation of the check cashing business to ensure the business is conducted lawfully and pursuant to the provisions of this act and any order, rule or regulation made or issued pursuant to this act.

6. Section 21 of P.L.1993, c.383 (C.17:15A-50) is amended to read as follows:

C.17:15A-50 Compliance of existing licensees; nonapplicability of act.

21. a. Any person holding a license in good standing issued pursuant to "The Check Cashing Law," P.L.1951, c.187 (C.17:15A-1 et seq.), and who wishes to continue to engage in the business of cashing checks, shall, within 90 days of the effective date of this act, submit to the commissioner a written statement certified to be true under penalty of law that the licensee complies with the provisions of this act; this statement shall include the information required by section 6 and section 10 of this act. Upon submission of the aforementioned statement under oath, a licensee's current license shall continue in accordance with the provisions of subsection a. of section 11 of this act. The licensee shall not be required to comply with subsection e. of section 12 or subsection f. of section 18 of this act.

b. This act shall not apply to any federal or State chartered bank, savings bank, savings and loan association, credit union or to any automated cash machine, including an automated cash machine that cashes checks for a fee, or to any automated check cashing machine operated at a principal office or branch location, except that no such entity shall conduct the business of cashing checks for a fee at a separate location, including by means of an automated check cashing machine or operating subsidiary, if that separate location is used primarily by any such entity for the purpose of cashing checks for a fee and is closer than 2,500 feet to an existing licensee. For purposes of this subsection, a separate location used primarily for the purpose of cashing checks for a fee as referred to in the preceding sentence shall not include any location that offers services equivalent to or greater than those provided by automated cash machines.

c. Notwithstanding subsection b. of this section, the provisions of P.L.1993, c.383 (C.17:15A-30 et seq.), including the distance restrictions set forth at subsection e. of section 12 of P.L.1993, c.383 (C.17:15A-41), shall apply to the operation of automated check cashing machines, except that automated check cashing machines shall not be subject to subsection f. of section 18 of P.L.1993, c.383 (C.17:15A-47). No person, partnership, association, corporation or other organization, other than a depository institution as defined in section 2 of P.L.1996, c.157 (C.17:11C-2), shall operate an automated check cashing machine without being duly licensed by the commissioner to engage in that business pursuant to P.L.1993, c.383 (C.17:15A-30 et seq.).

d. Payroll service providers are not subject to the fee limitations provided in section 14 of P.L.1993, c.383 (C.17:15A-43) when providing those services.

e. If any of the provisions of subsection b. or c. of this section are judicially determined to be unenforceable, preempted or inapplicable as applied to non-New Jersey chartered depositories, these restrictions shall be void and shall not be applicable to any depository institution.

7. Section 23 of P.L.1993, c.383 (C.17:15A-52) is amended to read as follows:

C.17:15A-52 Rules, regulations.

23. a. The commissioner shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act.

b. If the commissioner finds that reasonable grounds exist for requiring additional record keeping and reporting in order to carry out the purposes of this act, the commissioner may:

(1) issue an order requiring any group of licensees in a geographic area to provide information regarding transactions that involve a total dollar amount or denomination of \$2,500 or more, including the names of the persons participating in those transactions; and

(2) establish by regulation a reasonable fee for filing any report required by this subsection.

8. This act shall take effect immediately. The provisions of this act (P.L.2003, c.252) shall expire on the first day of the first month of the tenth year after the effective date of this act, unless prior to that date the Legislature reauthorizes this act.

Approved January 14, 2004.

CHAPTER 253

AN ACT concerning workers' compensation for certain occupational disease claims and workers' compensation benefit rates for surviving dependents, amending R.S.34:15-13, supplementing Title 34 of the Revised Statutes and repealing R.S.34:15-33.

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

1. R.S.34:15-13 is amended to read as follows:

Death benefits, burial expenses; computation and distribution.

34:15-13. Except as hereinafter provided, in case of death, compensation shall be computed, but not distributed, on the following basis:

- a. For one or more dependents, 70% of wages.
- b. (Deleted by amendment, P.L.2003, c.253).
- c. (Deleted by amendment, P.L.2003, c.253).
- d. (Deleted by amendment, P.L.2003, c.253).
- e. (Deleted by amendment, P.L.2003, c.253).

f. The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or the occurrence of occupational disease, or at the time of death, namely: husband, wife, parent, stepparents, grandparents, children, stepchildren, grandchildren, child in esse, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters, niece, nephew. Legally adopted children shall, in every particular, be considered as natural children. Dependency shall be conclusively presumed as to the decedent's spouse and to any natural child of a decedent under 18 years of age or, if enrolled as a full-time student, under 23 years of age, who was actually a part of the decedent's household at the time of the decedent's death. Every provision of this article applying to one class shall be equally applicable to the other. Should any dependent of a deceased employee die during the period covered by such weekly payments the right of such dependent to compensation under this section shall cease, but should the surviving spouse of a deceased employee remarry during such period and before the total compensation is paid, the spouse shall be entitled to receive the remainder of the compensation which would have been due the spouse had the spouse not remarried, or 100 times the amount of weekly compensation paid immediately preceding the remarriage, whichever is the lesser. The foregoing schedule applies only to persons wholly dependent, and in the case of persons only partially dependent, except in the case of the surviving spouse and children who were actually a part of the decedent's household at the time

of death, the compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages and the provision as to a minimum of 20% of the average weekly wage as set forth in subsection a. of R.S.34:15-12 shall not apply to such compensation. In determining the number of dependents, where the deceased employee was a minor, the number of persons dependent upon the deceased employee shall be determined in the same way as if the deceased employee were an adult, notwithstanding any rule of law as to the person entitled to a minor's wages.

g. Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the Division of Workers' Compensation, which shall, when applied to for that purpose, determine, upon the facts being presented to it, the proportion to be paid to or on behalf of each dependent according to the relative-dependency. Payment on behalf of infants shall be made to the surviving parent, if any, or to the statutory or testamentary guardian.

h. If death results from the accident or occupational disease, whether there be dependents or not, expenses of the last sickness of the deceased employee shall be paid in accordance with the provisions for medical and hospital service as set forth in R.S.34:15-15. In addition, the cost of burial and of a funeral, not to exceed \$3,500 shall be paid to the dependent or other person having paid the costs of burial and the funeral. In the event that the dependent or other person has paid less than \$3,500 for the costs of burial and the funeral, the dependent or other person shall be reimbursed in the amount paid and, if the costs of burial and the funeral exceed the amount so paid, the difference between the said amount and \$3,500 or so much thereof as may be necessary to pay the cost of burial and the funeral, shall be paid to the undertaker or embalmer or the dependent or other person having paid the costs of burial and the funeral. In the event that no part of the costs of burial and the funeral have been paid, the amount of such cost of burial and the funeral, not to exceed \$3,500, shall be paid to the undertaker or embalmer or the dependent or other person who is to pay the costs of burial and the funeral.

i. In computing compensation to those named in this section, except husband, wife, parents and stepparents, and except as otherwise provided in this section, only those under 18 or over 40 years of age shall be included and then only for that period in which they are under 18 or over 40; provided, however, that payments to such physically or mentally deficient persons as are for such reason dependent shall be made during the full compensation period of 450 weeks.

j. The maximum compensation in case of death shall be subject to the maximum compensation as stated in subsection a. of R.S.34:15-12 and a minimum of 20% of average weekly wages per week as set forth in subsection

a. of R.S.34:15-12, except in the case of partial dependency as provided in this section. This compensation shall be paid, in the case of a surviving spouse, during the entire period of survivorship or until such surviving spouse shall remarry and, in the case of other dependents, during 450 weeks and if at the expiration of 450 weeks there shall be one or more dependents under 18 years of age, compensation shall be continued for such dependents until they reach 18 years of age, or 23 years of age while enrolled as a full-time student, at the schedule provided under subsection a. of this section.

C.34:15-33.3 Application to uninsured employer's fund for certain claims for exposure to asbestos.

2. a. In the case of a claim for compensation for an occupational disease resulting in injury or death from an exposure to asbestos, if after due diligence, the standards for which shall be set forth by the Director of the Division of Workers' Compensation: (1) the workers' compensation insurer of an employer, the employer, or the principals of the employer where the claimant was last exposed cannot be located; or (2) the employee making the claim worked for more than one employer, during which time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the petitioner was last exposed cannot reasonably be identified, an application shall be made to the uninsured employer's fund, created pursuant to section 10 of P.L.1966, c.126 (C.34:15-120.1), and any award by a judge of compensation shall be payable from the fund. For the purposes of this section "occupational disease resulting in injury or death from an exposure to asbestos" means asbestosis or any asbestos-induced cancer, including mesothelioma.

b. In the case of any claim paid by the uninsured employer's fund pursuant to this section, the fund shall have the right of subrogation against (1) any insurer or employer identified as liable as set forth under the provisions of subsection a. of this section; or (2) against the stock workers' compensation security fund, or the mutual workers' compensation security fund, if an insolvent insurer is determined to be liable; or (3) against the New Jersey Self-Insurers Guaranty Association if an insolvent self-insurer is determined to be liable.

c. The fund shall have a lien pursuant to R.S.34:15-40 against any award received by the claimant from a third party resulting from the exposure to asbestos.

d. Compensation shall be based on the last date of exposure, if known, or if the last date of exposure cannot be known, the judge shall establish an appropriate date.

e. To ensure sufficient funding for the payment of claims under this section, the State Treasurer shall, within 30 days following the effective date of P.L.2003, c.253 (C.34:15-33.3 et al.) and upon request of the Commissioner of Labor, transfer an amount not to exceed \$500,000 from the Second Injury Fund to the uninsured employer's fund. At the end of the first calendar quarter

immediately following that effective date and at the end of each calendar quarter thereafter, the State Treasurer shall, upon request of the Commissioner of Labor, transfer from the Second Injury Fund to the uninsured employer's fund an amount estimated by the Commissioner of Labor to be required by the uninsured employer's fund for payment of such claims for the next following calendar quarter. Amounts transferred from the Second Injury Fund under the provisions of this subsection shall be included in the determination of surcharges and assessments for the Second Injury Fund and shall be excluded from the determination of surcharges and assessments for the uninsured employer's fund.

f. The Commissioner of Labor shall, within 180 days following the effective date of P.L.2003, c.253 (C.34:15-33.3 et al.), promulgate rules and regulations as necessary to effectuate the purposes of that act.

Repealer.

3. R.S.34:15-33 is repealed.
4. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 254

AN ACT requiring local housing authorities and the Commissioner of Community Affairs to report certain information to the Legislature, supplementing chapter 27D of Title 52 of the New Jersey Statutes and amending P.L.1992, c.79.

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

C.52:27D-3.4 Report on violent crimes in certain types of housing.

1. a. Not later than September 1st of each year, the executive director of a housing authority created pursuant to the "Local Housing Authorities Law," P.L.1938, c.19 (C.55:14A-1 et seq.) or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) and the owner of a property consisting of 10 or more rental units receiving project-based federal section 8 rental assistance, hereinafter "project-based housing," shall report to the Commissioner of Community Affairs, on a form prepared and provided by the commissioner for this purpose, the number and type of violent crimes, as those crimes are delineated in the most recently issued Uniform Crime Report, published by the Department of Law and Public Safety, and drug offenses,

as those offenses are enumerated in the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia, committed on property owned by the housing authority or committed on project-based housing, respectively, at any time during the preceding State fiscal year. The report shall also include the amount expended by the housing authority or the project-based housing entity for drug elimination and crime prevention and control.

b. Not later than January 1st of each year, the commissioner shall prepare and distribute to each member of the Legislature a report displaying all of the information reported by each housing authority and project-based housing entity required to report under this act. The report shall also assimilate and analyze the information reported by each housing authority and project-based housing entity required to report under this act.

c. The commissioner shall promulgate rules and regulations necessary to effectuate the provisions of this act pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), not later than the 90th day following the effective date of P.L.2003, c.254 (C.52:27D-3.4 et al.).

2. Section 45 of P.L.1992, c.79 (C.40A:12A-45) is amended to read as follows:

C.40A:12A-45 Standards for course of study for executive directors.

45. The Commissioner of Community Affairs shall prescribe and enforce standards for the curriculum and administration of a course of study as he deems appropriate, the object of which shall be to assist members and executive directors of local housing authorities and municipal redevelopment agencies to acquire the knowledge and skills necessary to oversee and administer the operations of such authorities or agencies in accordance with current law and in the best interests of the citizens served by such authorities. The commissioner shall adopt the standards by administrative rule, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The course shall consist of instruction in the principles of housing and redevelopment, which may include, but not be limited to, construction management and code compliance, financial management and public administration, and such other topics as the commissioner may deem appropriate. The commissioner shall, to the greatest extent possible, cooperate with organizations of housing authority representatives and redevelopment agency representatives, and shall consult with Rutgers, The State University, and other educational institutions in establishing the standards for the curriculum and administration of the course of study, as provided above. The course shall

also include information concerning strategies for drug elimination and crime prevention and control and the use of drug elimination funds.

3. This act shall take effect 180 days following enactment; however, subsection c. of section 1 shall take effect immediately.

Approved January 14, 2004.

CHAPTER 255

AN ACT restricting the receipt of certain things of value by members and staff of the Legislature and officers and staff of the Executive Branch and concerning certain benefits to public servants, and amending and supplementing P.L.1971, c.182, supplementing P.L.1971, c.183 (C.52:13C-18 et seq.), supplementing Title 2C of the New Jersey Statutes and repealing N.J.S.2C:27-4 and 2C:27-6.

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

1. Section 13 of P.L.1971, c.182 (C.52:13D-24) is amended to read as follows:

C.52:13D-24 Restriction on, solicitation, receipt etc. of certain things of value by certain State officers, employees.

13. a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated

with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the Executive Commission on Ethical Standards to ensure that the receipt of such income does not violate the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12

et seq.) or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not constitute a crime or offense under the laws of this State.

C.52:13D-24.1 Restrictions on acceptance of gifts, etc. from lobbyist, legislative agent.

2. Except as expressly authorized in section 13 of P.L.1971, c.182 (C.52:13D-24) or when the lobbyist or legislative agent is a member of the immediate family of the officer or staff member of the Executive Branch or member of the Legislature or legislative staff, no officer or staff member of the Executive Branch or member of the Legislature or legislative staff may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or legislative agent, as defined in the "Legislative Activities Disclosure Act of 1971," P.L.1971, c.183 (C.52:13C-18 et seq.), totaling more than \$250.00 in a calendar year. The \$250.00 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of P.L.1971, c.182 (C.52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

b. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an individual covered in subsection a. of this section or a member of the

immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

c. Subsection a. of this section shall not apply if an officer or staff member of the Executive Branch or member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or legislative agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or legislative agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

C.52:13C-21b Restriction on offer of gifts, etc. to certain State officers or employees.

3. Except as expressly authorized in section 13 of P.L.1971, c.182 (C.52:13D-24) or when the lobbyist or legislative agent is a member of the immediate family of the officer or staff member of the Executive Branch or member of the Legislature or legislative staff, no lobbyist or legislative agent shall offer or give or agree to offer or give, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value to an officer or staff member of the Executive Branch or member of the Legislature or legislative staff, totaling more than \$250.00 in a calendar year. The \$250.00 limit on any compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of P.L.1971, c.182 (C.52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

b. The prohibition in subsection a. of this section on offering or giving, or agreeing to offer or give, any compensation, reward, gift, honorarium or other thing of value shall not apply if it is in the course of employment, by an employer other than the State, of an individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on offering or giving, or agreeing to offer or give, any compensation, reward, gift, honorarium or other thing of value shall not apply if receipt is from a member of the immediate family when the family member received such in the course of his or her employment.

c. Subsection a. of this section shall not apply if an officer or staff member of the Executive Branch or member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value

offered or given by a lobbyist or legislative agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or legislative agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

C.52:13D-28 Program on legislative ethics.

4. The Legislature shall provide a program on legislative ethics for its members and State officers or employees and special State officers or employees in the Legislative Branch of government no later than April 1 of every even-numbered year.

C.2C:27-10 Acceptance or receipt of unlawful benefit by public servant for official behavior.

5. Acceptance or receipt of unlawful benefit by public servant for official behavior.

a. A public servant commits a crime if, under color of office and in connection with any official act performed or to be performed by the public servant, the public servant directly or indirectly, knowingly solicits, accepts or agrees to accept any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

b. A public servant commits a crime if, under color of office and in connection with any official act performed or to be performed by the public servant, the public servant directly or indirectly, knowingly receives any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

c. In addition to the definition set forth in N.J.S.2C:27-1, "benefit" as used in this act includes any benefit from or by reason of a contract or agreement for goods, property or services if the contract or agreement is awarded, made or paid by the branch, subdivision, or agency of the government that employs the public servant.

d. The provisions of this section shall not apply to:

(1) Fees prescribed by law to be received by a public servant or any other benefit to which the public servant is otherwise legally entitled if these fees or benefits are received in the manner legally prescribed and not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty;

(2) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient if these gifts or benefits are within otherwise legally permissible

limits and are not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty; or

(3) Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner.

e. An offense proscribed by this section is a crime of the second degree. If the benefit solicited, accepted, agreed to be accepted or received is of a value of \$200.00 or less, any offense proscribed by this section is a crime of the third degree.

C.2C:27-11 Offer of unlawful benefit to public servant for official behavior.

6. Offer of unlawful benefit to public servant for official behavior.

a. A person commits a crime if the person offers, confers or agrees to confer any benefit, whether the benefit inures to the public servant or another person, to influence a public servant in the performance of an official duty or to commit a violation of an official duty.

b. A person commits a crime if the person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.

c. In addition to the definition set forth in N.J.S. 2C:27-1, "benefit" as used in this act includes any benefit from or by reason of a contract or agreement for goods, property or services if the contract or agreement is awarded, made or paid by the branch, subdivision, or agency of the government that employs the public servant.

d. The provisions of this section shall not apply to:

(1) Fees prescribed by law to be received by a public servant or any other benefit to which the public servant is otherwise legally entitled if these fees or benefits are received in the manner legally prescribed and not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty;

(2) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient if these gifts or benefits are within otherwise legally permissible limits and are not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty; or

(3) Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner.

e. (1) An offense proscribed by subsection a. of this section is a crime of the second degree. If the benefit solicited, accepted or agreed to be accepted is of a value of \$200.00 or less, any offense proscribed by subsection a. of this section is a crime of the third degree.

(2) An offense proscribed by subsection b. of this section is a crime of the third degree. If the gift or other benefit is of a value of \$200.00 or less,

an offense proscribed by subsection b. of this section is a crime of the fourth degree.

Repealer.

7. N.J.S.2C:27-4 and N.J.S.2C:27-6 are repealed.

8. This act shall take effect on the 90th day next following enactment except that sections 5, 6 and 7 shall take effect immediately

Approved January 14, 2004.

CHAPTER 256

AN ACT exempting certain investment clubs from certain partnership fee and payment requirements, amending P.L.2002, c.40 and N.J.S.54A:8-6.

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

1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to read as follows:

C.54:10A-15.11 Tax payment by certain partnerships; definitions.

12. a. A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

b. An amount of tax paid by a partnership pursuant to subsection a. of this section shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the multiplier rate for that partner class under subsection a. of this section as of the date of its receipt by the director, and each amount of tax so credited shall

be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner.

c. For the purposes of this section:

"Investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with privilege periods commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the privilege period begins, by that index for September of 2001;

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

"Nonresident corporate partner" means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

2. N.J.S.54A:8-6 is amended to read as follows:

Requirements concerning returns, notices, records and statements.

54A:8-6. Requirements concerning returns, notices, records and statements.
(a) General. The director may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The director may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the director may deem sufficient

to show whether or not such person is liable under this act for tax or for collection of tax.

(b) Partnerships. (1) Each entity classified as a partnership for federal income tax purposes, including but not limited to a partnership, a limited liability partnership, or a limited liability company, having a resident owner of an interest in the entity or having any income derived from New Jersey sources, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the director may by regulations and instructions prescribe. The director shall prescribe a State return form that, at a minimum, includes the name and address of each partner, member, or other owner of an interest in the entity however designated, of the entity for taxable years ending on or after December 31, 1994. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year.

(2) (A) Each entity classified as a partnership for federal income tax purposes, other than an investment club, having any income derived from New Jersey sources, including but not limited to a partnership, a limited liability partnership, or a limited liability company, that has more than two owners shall at the prescribed time for making the return required under this subsection make a payment of a filing fee of \$150 for each owner of an interest in the entity, up to a maximum of \$250,000. For the purposes of this paragraph, "investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its taxable year, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with taxable years commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the taxable year begins, by that index for September of 2001;

(B) Each entity required to make a payment pursuant to subparagraph (A) of this paragraph shall also make, at the same time as making its payment pursuant to subparagraph (A) of this paragraph, an installment payment of its filing fee for the succeeding return period in an amount equal to 50% of the amount required to be paid pursuant to subparagraph (A). The amount

of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period, or, if the amount of the installment payment exceeds the amount of the filing fee due for the succeeding return period, successive return periods.

(C) Notwithstanding the provisions of R.S.54:48-2 and R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph (A) of this paragraph and the installment payment required pursuant to subparagraph (B) of this paragraph shall, for purposes of administration, be payments to which the provisions of the State Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable and the collection thereof may be enforced by the director in the manner therein provided.

(3) Each entity required to file a return under this subsection for any taxable year shall, on or before the day on which the return for the taxable year is required to be filed, furnish to each person who is a partner or other owner of an interest in the entity however designated, or who holds an interest in such entity as a nominee for another person at any time during that taxable year a copy of such information required to be shown on such return as the director may prescribe.

(4) For the purposes of this subsection, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this act.

(c) Information at source. The director may prescribe regulations and instructions requiring returns of information to be made and filed on or before February 15 of each year as to the payment or crediting in any calendar year of amounts of \$100.00 or more to any taxpayer under this act. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, et cetera. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the director, as may be required by regulation.

3. This act shall take effect immediately and apply to taxable years and privilege periods beginning on or after January 1, 2002.

Approved January 14, 2004.

CHAPTER 257

AN ACT concerning vaccinations and supplementing Title 26 of the Revised Statutes.

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

C.26:2N-8 Definitions relative to vaccinations.

1. As used in this act:

"Antibody titer" means a test to measure the presence and amount of antibodies in a blood sample against a particular type of tissue, cell or substance.

"Health care provider" means any licensed health care professional or public or private health care facility in this State that administers vaccinations.

C.26:2N-9 Administration of antibody titer prior to second dose of MMR vaccine.

2. a. Prior to administering a second dose of the measles-mumps-rubella (MMR) vaccine to a child, a health care provider may give the child's parent or guardian the option of consenting to the administration of an antibody titer to determine whether or not the child has already developed immunity to MMR in response to a previously administered dose of the vaccine and would not require the second dose.

b. Documented laboratory evidence of immunity from MMR shall exempt a child from further vaccination for MMR, as may be required pursuant to Department of Health and Senior Services regulations.

C.26:2N-10 Pamphlet explaining nature, purpose of MMR vaccine and antibody titer.

3. The Commissioner of Health and Senior Services shall prepare and make available to all health care providers in the State a pamphlet that explains the nature and purpose of the MMR vaccine and the antibody titer used to determine immunity pursuant to section 2 of this act.

The commissioner shall send a copy of the pamphlet to every licensed health care provider in the State who administers the MMR vaccine, with a cover letter advising the health care provider that the pamphlet was prepared in accordance with the requirements of P.L.2003, c. 257 (C.26:2N-8 et seq.), known as "Holly's Law," and how the health care provider can obtain additional copies of the pamphlet from the Department of Health and Senior Services.

C.26:2N-11 Rules, regulations.

4. The Commissioner of Health and Senior Services shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to carry out the provisions of this act.

5. This act shall take effect on the 180th day following enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 14, 2004.

CHAPTER 258

AN ACT concerning certain trusts, amending N.J.S.3B:12-54 and supplementing Title 3B of the New Jersey Statutes.

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

1. N.J.S.3B:12-54 is amended to read as follows:

Duty of guardian to deliver property when minor attains 18 years of age.

3B:12-54. Except as provided in section 2 of P.L.2003, c.258 (C.3B:12-54.1), when a minor who has not been adjudged a mental incompetent attains 18 years of age, his guardian, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former ward as soon as possible.

C.3B:12-54.1 Trusts for certain beneficiaries providing deferred distribution of funds.

2. In the event that any part of an intestate estate passes to the decedent's issue pursuant to N.J.S.3B:5-4, and if any such issue shall not have attained the age of 18 at the time such part of the intestate estate would pass to such issue, such part may pass as follows:

a. The parent or guardian of such issue or any other individual with standing may apply to the Superior Court, Chancery Division, Probate Part in the county in which the decedent was domiciled for permission to place all, or any part, of the funds passing to such issue in a separate trust for the exclusive benefit of such issue.

b. The terms of the trust may provide as follows:

(1) The trust assets and the income therefrom shall be used for the exclusive benefit of the beneficiary, including but not limited to the beneficiary's health,

support, maintenance and education, including college and post-graduate work, in the discretion of the trustees;

(2) The beneficiary shall have the right to request distributions of trust principal as follows: one-third of the principal after attaining the age of 25 years, one-half of the then balance after attaining the age of 30 years, and all of the then balance after attaining the age of 35 years; or at such other ages as the court, in its discretion, shall determine;

(3) Should the beneficiary die prior to the termination of the trust, the remaining trust principal and accrued income shall be distributed to the beneficiary's estate;

(4) Two individual trustees, or one corporate trustee, or a combination thereof, shall serve at all times, with or without bond, as the court shall determine in its discretion; and

(5) Such other terms and conditions of the trust as the court shall determine in its discretion.

c. In ruling on such an application, the court:

(1) may allow any award from the federal "September 11th Victim Compensation Fund of 2001" to be the subject of a trust created pursuant to this section or be included in such a trust, regardless of whether such an award is found to pass to a minor issue of the decedent pursuant to N.J.S.3B:5-4 or otherwise; and

(2) shall consider all relevant factors, including but not limited to the amount of money involved, the availability of other resources for current maintenance and support, the stability of the entity offering an investment covered by the application, income tax consequences, any special needs or vulnerabilities of the minor and the financial and psychological consequences of putting all or a substantial part of the minor's estate out of reach for a long period of time.

d. The court shall retain jurisdiction of the trust until its termination. The beneficiary's parent, guardian, trustee or other individual with standing, including the beneficiary if he or she has attained the age of 18 years, may apply to the court at any time for modifications to the terms of the trust. Modifications may be made in the court's discretion.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 259

AN ACT concerning certain service of process fees and amending P.L.1991, c.177.

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

1. Section 14 of P.L.1991, c.177 (C.22A:2-37.1) is amended to read as follows:

C.22A:2-37.1 Special Civil Part of Superior Court, Law Division, fees; use.

14. a. From the effective date of the amendments made to this section by section 1 of P.L.2003, c.259 through the fifth year thereafter:

In all civil actions and proceedings in the Special Civil Part of the Superior Court, Law Division, only the following fees shall be charged by the clerk and no service shall be performed until the specified fee has been paid:

- | | |
|---|---------|
| (1) Filing of small claim, one defendant | \$15.00 |
| Each additional defendant | \$ 2.00 |
| (2) Filing of complaint in tenancy,
one defendant | \$25.00 |
| Each additional defendant | \$ 2.00 |
| (3) (a) Filing of complaint or other initial
pleading containing a counterclaim, cross-claim
or third party complaint in all other civil actions,
whether commenced without process or by summons,
capias, replevin or attachment where the amount
exceeds the small claims monetary limit | \$50.00 |
| Each additional defendant | \$ 2.00 |
| (b) Filing of complaint or other initial
pleading containing a counterclaim, cross-claim
or third party complaint in all other civil actions,
whether commenced without process or by summons,
capias, replevin or attachment where the amount
does not exceed the small claims monetary limit | \$32.00 |
| Each additional defendant | \$ 2.00 |
| (4) Filing of appearance or answer
to a complaint or third party complaint in all
matters except small claims | \$15.00 |

(5) Service of Process: Fees for service of process, including: summons by mail, each defendant; summons by mail each defendant at place of business or employment with postal instructions to deliver to addressee only; reservice of summons by mail, each defendant; postage for substituted service of process by the clerk upon the Chief Administrator of the New Jersey Motor Vehicle Commission in addition to the substituted service fee provided below; and wage execution by mail to a federal agency, shall be set by the Administrative Director of the Courts. The fee for service of process shall not exceed the

postal rates for ordinary and certified mail, return receipt requested, and may include an administrative fee that shall not exceed \$0.25 for each defendant served with process by mail. The total service of process fee shall be rounded upward to the nearest dollar. For the purposes of this paragraph, service of process means the simultaneous mailing by ordinary and certified mail, return receipt requested, to the defendant at the address provided by the plaintiff.

Reservice of summons or other original process by
court officer, one defendant \$ 3.00
plus mileage

Each additional defendant \$2.00
plus mileage

Substituted service of process by the clerk upon
the Chief Administrator of the
New Jersey Motor Vehicle Commission \$10.00

(6) Mileage of court officer in serving or executing any process, writ, order, execution, notice, or warrant, the distance to be computed by counting the number of miles in and out, by the most direct route from the place where process is issued, at the same rate per mile set by the State for other State employees and the total mileage fee rounded upward to the nearest dollar

(7) Jury of six persons \$50.00

(8) Warrant for possession in tenancy \$15.00

(9) Warrant to arrest, commitment

or writ of *capias ad respondendum*, each defendant \$15.00

(10) Writ of execution or an order in
the nature of execution, writs of *replevin* and
attachment issued subsequent to summons \$ 5.00

(11) For advertising property under execution
or any order \$10.00

(12) For selling property under
execution or any order \$10.00

(13) Exemplified copy of judgment
(two pages) \$ 5.00

each additional page \$ 1.00

b. (Deleted by amendment, P.L.2002, c.34).

c. (Deleted by amendment, P.L.2002, c.34).

d. After the fifth year following the effective date of the amendments made to this section by section 1 of P.L.2003, c.259:

In all civil actions and proceedings in the Special Civil Part of the Superior Court, Law Division, only the following fees shall be charged by the clerk and no service shall be performed until the specified fee has been paid:

(1) Filing of small claim, one defendant \$15.00

Each additional defendant \$ 2.00

(2) Filing of complaint in tenancy, one defendant	\$25.00
Each additional defendant	\$ 2.00
(3) (a) Filing of complaint or other initial pleading containing a counterclaim, cross-claim or third party complaint in all other civil actions, whether commenced without process or by summons, capias, replevin or attachment where the amount exceeds the small claims monetary limit	\$50.00
Each additional defendant	\$ 2.00
(b) Filing of complaint or other initial pleading containing a counterclaim, cross-claim or third party complaint in all other civil actions, whether commenced without process or by summons, capias, replevin or attachment where the amount does not exceed the small claims monetary limit	\$32.00
Each additional defendant	\$ 2.00
(4) Filing of appearance or answer to a complaint or third party complaint in all matters except small claims	\$15.00
(5) Service of Process:	
Summons by mail, each defendant	\$ 4.00
Summons by mail, each defendant at place of business or employment with postal instructions to deliver to addressee only, additional fee	\$ 4.00
Reservice of summons by mail, each defendant	\$ 4.00
Reservice of summons or other original process by court officer, one defendant	\$ 3.00
plus mileage	
Each additional defendant	\$2.00
plus mileage	
Substituted service of process by the clerk upon the Chief Administrator of the New Jersey Motor Vehicle Commission	\$10.00
Plus postage.	\$ 4.00
(6) Mileage of court officer in serving or executing any process, writ, order, execution, notice, or warrant, the distance to be computed by counting the number of miles in and out, by the most direct route from the place where process is issued, at the same rate per mile set by the State for other State employees and the total mileage fee rounded upward to the nearest dollar	
(7) Jury of six persons	\$50.00
(8) Warrant for possession in tenancy	\$15.00

(9) Warrant to arrest, commitment or writ of capias ad respondendum, each defendant	\$15.00
(10) Writ of execution or an order in the nature of execution, writs of replevin and attachment issued subsequent to summons	\$ 5.00
Wage execution by mail to a federal agency additional fee	\$ 4.00
(11) For advertising property under execution or any order	\$10.00
(12) For selling property under execution or any order	\$10.00
(13) Exemplified copy of judgment (two pages)	\$ 5.00
each additional page	\$ 1.00

2. Section 15 of P.L.1991, c.177 (C.22A:2-37.2) is amended to read as follows:

C.22A:2-37.2 Fees to officers designated by Assignment Judge to serve process.

15. a. From the fees set forth in section 14 of P.L.1991, c.177 (C.22A:2-37.1), the clerk of the Special Civil Part of the Superior Court, Law Division, shall pay to officers designated by the Assignment Judge to serve process the following fees:

(1) Serving summons, notice or third party complaint on one defendant	\$ 3.00
on every additional defendant	\$ 2.00
(2) Reserving summons or other original process on any defendant	\$ 3.00
(3) Warrant to arrest, capias, or commitment, for each defendant served	\$15.00
(4) Serving writ and summons in replevin, taking bond and any inventory, against one defendant	\$ 6.00
on every additional defendant	\$ 2.00
(5) Serving writ in replevin when issued subsequent to service of summons, against one defendant	\$ 5.00
on every additional defendant	\$ 2.00
(6) Serving order for possession in replevin	\$ 4.00
(7) Serving writ of attachment and making inventory, one defendant	\$ 4.00
on every additional defendant	\$ 2.00

(8) Serving and executing warrant
for possession in tenancy \$10.00

(9) Every execution, or any order in
the nature of an execution, on a judgment, for
each defendant \$ 2.00

b. For every mile of travel in serving or executing any process, writ, order, execution, notice or warrant, the distance to be computed by counting the number of miles in and out, by the most direct route from the place where process is issued, at the same rate per mile set by the State for other State employees and the total mileage fee rounded upward to the nearest dollar.

c. In addition to the foregoing, the following fees for officers of the Special Civil Part shall be taxed in the costs and collected on execution, writ of attachment or order in the nature of any execution on any final judgment, or on a valid and subsisting levy of an execution or attachment which may be the effective cause in producing payment or settlement of a judgment or attachment:

(1) For advertising property
under execution or any order \$10.00

(2) For selling property under
execution or any order \$10.00

(3) On every dollar collected on
execution, writ of attachment, or any order, \$ 0.10

(4) In the event a judgment is vacated for any reason after a court officer has made a levy and thereafter the judgment is reinstated or the case is settled, the dollarage due the court officer on payment of the judgment amount or settlement amount again shall be taxed in the costs and collected.

d. In addition to the foregoing, the clerk of the Special Civil Part shall pay to officers designated by the Assignment Judge to serve wage executions on a federal agency an amount equal to the fee set by either the Administrative Director of the Courts pursuant to paragraph (5) of subsection a. of section 14 of P.L.1991, c.177 (C.22A:2-37.1) or set pursuant to subsection d. of that section, whichever then may be applicable, for each wage execution served.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 260

AN ACT concerning the "Catastrophic Illness in Children Relief Fund" and amending P.L.1987, c.370.

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

1. Section 2 of P.L.1987, c.370 (C.26:2-149) is amended to read as follows:

C.26:2-149 Definitions relative to catastrophic illness in children.

2. As used in this act:

a. "Catastrophic illness" means any illness or condition the medical expenses of which are not covered by any other State or federal program or any insurance contract and exceed 10% of the first \$100,000 of annual income of a family plus 15% of the excess income over \$100,000.

b. "Child" means a person 21 years of age and under.

c. "Commission" means the Catastrophic Illness in Children Relief Fund Commission.

d. "Family" means a child and the child's parent, parents or legal guardian, as the case may be, who is legally responsible for the child's medical expenses.

e. "Fund" means the Catastrophic Illness in Children Relief Fund.

f. "Income" means all income, from whatever source derived, actually received by a family.

g. "Resident" means a person legally domiciled within the State for a period of three months immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months or more is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the parent or legal guardian of a child.

2. Section 7 of P.L.1987, c.370 (C.26:2-154) is amended to read as follows:

C.26:2-154 Powers; duties.

7. The commission has, but is not limited to, the following powers and duties:

a. Establish in conjunction with the Special Child Health Services program established pursuant to P.L.1948, c.444 (C.26:1A-2 et seq.) a program for the purposes of this act, administer the fund and authorize the payment or reimbursement of the medical expenses of children with catastrophic illnesses;

b. Establish procedures for application to the program, determining the eligibility for the payment or reimbursement of medical expenses for each child, and processing fund awards and appeals. The commission shall also establish procedures to provide that, in the case of an illness or condition for which the family, after receiving assistance pursuant to this act, recovers damages for the child's medical expenses pursuant to a settlement or judgment

in a legal action, the family shall reimburse the fund for the amount of assistance received, or that portion thereof covered by the amount of the damages less the expense of recovery;

c. Establish the amount of reimbursement for the medical expenses of each child using a sliding fee scale based on a family's ability to pay for medical expenses which takes into account family size, family income and assets and family medical expenses and adjust the financial eligibility criteria established pursuant to subsection a. of section 2 of this act based upon the moneys available in the fund;

d. Disseminate information on the fund and the program to the public;

e. Adopt bylaws for the regulation of its affairs and the conduct of its business, adopt an official seal and alter the same at pleasure, maintain an office at the place within the State as it may designate, and sue and be sued in its own name;

f. Appoint, retain or employ staff, experts or consultants on a contract basis or otherwise, who are deemed necessary, and employ investigators or other professionally qualified personnel who may be in the noncompetitive division of the career service of the Civil Service, and as may be within the limits of funds appropriated or otherwise made available to it for its purposes;

g. Maintain confidential records on each child who applies for assistance under the fund;

h. Do all other acts and things necessary or convenient to carry out the purposes of this act; and

i. Adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act.

3. Section 9 of P.L.1987, c.370 (C.26:2-156) is amended to read as follows:

C.26:2-156 Financial assistance.

9. Whenever a child has a catastrophic illness and is eligible for the program, the child, through his parent or legal guardian, shall receive financial assistance from monies in the fund subject to the rules and regulations established by the commission and the availability of monies in the fund. The financial assistance shall include, but is not limited to, payments or reimbursements for the cost of medical treatment, hospital care, drugs, nursing care and physician services.

4. This act shall take effect immediately and shall be retroactive to January 1, 2002.

Approved January 14, 2004.

CHAPTER 261

AN ACT providing for the regulation of certain cemeteries and revising parts of the statutory law.

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

C.45:27-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Cemetery Act, 2003."

C.45:27-2 Definitions relative to cemeteries.

2. The following definitions, unless the context indicates otherwise, apply to this act:

"Annual, endowed or special care" means care or maintenance of an individual interment space provided for by agreement between the cemetery and the owner of the space.

"Board" means the New Jersey Cemetery Board.

"Burial" means disposition of human remains by placing them in a grave or crypt, but does not include their temporary storage.

"Burial right" means a right for the burial of human remains in a particular grave or crypt created by contract between a person and a cemetery.

"Cemetery" means any land or place used or dedicated for use for burial of human remains or disposition of cremated human remains, and also includes a crematory located on dedicated cemetery property.

"Cemetery company" means a person that owns, manages, operates or controls a cemetery, directly or indirectly, but does not include a religious organization that owns a cemetery which restricts burials to members of that religion or their families unless the organization has obtained a certificate of authority for the cemetery.

"Columbarium" means a building or structure containing niches for placement of cremated human remains.

"Cremated human remains" means the recoverable bone fragments and container residue resulting from the process of cremation.

"Cremation" means the process of reducing human remains to bone fragments through flame, heat and vaporization.

"Crematory" means a structure containing cremation chambers used to cremate human remains.

"Crypt" means an interment space in a mausoleum or other structure, above or below ground.

“Embellishment” means an item contributing to beauty, comfort or enhancement of a cemetery, but does not include a memorial or a disposable, perishable or seasonal item.

“General maintenance charge” means a fee assessed against each interment space for the general upkeep of the cemetery.

“Grave” means a place for underground disposition of human remains or cremated human remains. A grave may include spaces for the disposition of human remains of more than one person, arranged by depth.

“Human remains” means a body, or part of a body, of a deceased human being.

“Interment” means the disposition of human remains by burial in a grave or crypt but does not mean the temporary storage of remains.

“Interment space” means a grave or crypt intended for the interment of human remains.

“Maintenance” means all activities of a cemetery company which further the care and upkeep of a cemetery, including cutting lawns, and preservation and repair of drains, water lines, roads, buildings, fences and other structures.

“Maintenance and preservation” means the care of the entire cemetery to the extent of the income of the Maintenance and Preservation Fund; it does not include providing specific care to individual graves or plots.

“Mausoleum” means a permanent building in a cemetery above or below ground, containing crypts to be used for burial.

“Memorial” means a marker or monument located at a grave containing the name of a deceased person or the family name of a deceased person, or an effigy or other representation of a deceased person buried in the grave. It does not include an embellishment.

“Niche” means a space in a columbarium or mausoleum for placement of cremated human remains.

“Path” means a course or way intended to provide pedestrian access to interment spaces.

“Person” includes an individual, corporation, partnership, association or any other public or private entity.

“Plot” or “lot” means an area of cemetery ground containing two or more adjoining graves.

“Private mausoleum” means a mausoleum constructed by or for a plot owner and not owned by the cemetery.

“Public mausoleum” means a mausoleum, built in accordance with regulations of the Department of Community Affairs, owned by a cemetery or cemetery company with the intention of use of interment spaces in it by the general public. A mausoleum is distinguished from a single or multiple vault in that it is a single integrated structure assembled on the premises. It

shall not consist of one or more vaults constructed off the cemetery premises and installed singly or in series at the cemetery premises.

“Roadway” means a course or way intended to provide vehicle access to interment spaces.

“Vault” means a prefabricated outer burial case of any material, designed to be installed in the ground to receive one or more burials, and not a part of a public or private mausoleum or any other structure.

C.45:27-3 New Jersey Cemetery Board continued.

3. a. The New Jersey Cemetery Board is continued and established within the Division of Consumer Affairs in the Department of Law and Public Safety.

b. The board shall consist of ten members. Five members shall be persons who have served, for a period of at least five consecutive years immediately preceding appointment, as a member of the governing board or an official of a cemetery company. Two members shall be public members and shall have no interest directly or indirectly in any cemetery company or any allied industry. Each of these seven members shall be appointed by the Governor with the advice and consent of the Senate, to serve for the term of four years and until the appointment and qualification of a successor. Vacancies shall be filled in the same manner as original appointments but for the unexpired term only. One member shall be the Commissioner of Community Affairs or the commissioner’s designee serving ex-officio, one member shall be the Attorney General or his designee serving ex-officio and one member shall be the designee of the Commissioner of Health and Senior Services.

c. The Governor may remove any member of the board from office for cause upon notice and opportunity to be heard.

d. The members of the board shall elect a chair and other officers from among themselves. The board shall meet at least four times each year, at the call of its chair or at the written request of two members of the board directed to its chair. The chair shall fix the time and place for the meetings.

e. The Division of Consumer Affairs shall assign its employees to serve as staff for the board.

C.45:27-4 Responsibilities of board.

4. a. The board shall administer the provisions of this act and shall have general supervision and regulation of, and jurisdiction and control over, all cemetery companies and their property, property rights, equipment and facilities so far as may be necessary to carry out the provisions of this act.

b. The board shall adopt regulations to carry out the purposes of this act. Regulations shall be adopted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). This act and the regulations shall be enforced in accordance with P.L.1978, c.73 (C.45:1-14

et seq.) and the "Penalty Enforcement Law of 1999," PL.1999, c.274 (C.2A:58-10 et seq.).

c. The board may adjust charges and fees as provided by section 2 of P.L.1974, c.46 (C.45:1-3.2) to defray the proper expenses of administration of this act.

d. Nothing in this act shall affect any of the powers regarding cemeteries heretofore exercised by the Attorney General.

e. Nothing in this act shall authorize the board to establish the prices at which graves or crypts may be sold or the charges made for services rendered by cemetery companies.

f. The board may institute an action in the Superior Court for injunctive or other relief or for appointment of a receiver to enforce this act or regulations established under it.

C.45:27-5 Notice of actions, proceedings involving cemetery companies.

5. The Attorney General and the board shall be served with notice of any action or proceeding by or against a cemetery company and may intervene in the action or proceeding to protect the public interest.

C.45:27-6 Ownership, operation of cemetery, forms authorized.

6. A cemetery established after December 1, 1971 shall be owned or operated only by a governmental entity, a religious corporation or organization or by a cemetery company organized in accordance with this act.

C.45:27-7 Cemetery company, nonprofit corporation, certificate of authority.

7. a. A cemetery company organized in accordance with this act after December 1, 1971 shall not operate a cemetery unless the company is a nonprofit corporation organized and operated in compliance with Title 15A of the New Jersey Statutes and has been issued a certificate of authority to do so by the board.

b. The application for a certificate of authority by a cemetery company shall be made in writing under oath in the form established by the board. Public notice of an application shall be provided in the agenda of the board for the first meeting of the board following receipt of the application. All applications shall be subject to public access. The application shall contain the information that the board requires to determine:

(1) the necessity for the services the applicant seeks to provide, considering present or future public need and convenience, land or territorial qualifications; and

(2) the applicant's fitness and ability to: perform proposed services; conform to this act and to board requirements; and comply with health protection regulations of the New Jersey Department of Health and Senior Services,

the New Jersey Department of Environmental Protection, or a local health authority.

c. The application fee and all other fees required pursuant to this act shall be set by the board by regulation. The application fee shall not be required from any company that existed before December 1, 1971, which no longer has cemetery land to sell, and exists solely for maintenance and preservation of the cemetery.

d. The board shall not act on an application for 60 days after receipt of an application, and shall only act after public notice of the application has been provided. If the board receives a written objection to the application, it shall hold a hearing on notice to the objector and the applicant before it acts on the application.

e. A cemetery company organized prior to December 1, 1971 shall not continue to operate a cemetery unless the company has been issued a certificate of authority by the board. The board shall grant the company a certificate of authority preserving any rights and obligations of its charter subject to applicable law and regulations.

C.45:27-8 Purposes of cemetery company.

8. a. The charter or certificate of incorporation of a cemetery company organized after December 1, 1971 shall state in that section of the charter devoted to the purposes for which the cemetery company is organized one or more of the following purposes:

(1) The procuring and preservation of lands to be used exclusively as a cemetery.

(2) The disposition of human remains, including maintenance and operation of land and the construction of structures including crematories, mausoleums, columbariums and other places for human remains or cremated human remains.

b. The stated purposes of the cemetery company shall be considered by the board and may be used as a basis for its determination as to whether to issue a certificate of authority.

c. Except as provided by section 9 of this act, for a cemetery company to amend its charter or certificate of incorporation, it first shall have the amendment approved by the board.

d. A cemetery company shall not be dissolved or merged without the board's approval. The board shall not approve the action unless it finds that the company has complied with regulations and has made adequate provision for maintenance and preservation.

C.45:27-9 Amendment of charter, certificate of incorporation.

9. a. A cemetery company organized as a for-profit corporation may amend its charter or certificate of incorporation to operate as a nonprofit lot owner cemetery subject to the provisions of this act provided a plan for the conversion

of its issued stock to certificates of interest is first approved by a majority of its stockholders, and by a majority of the owners of interment spaces in attendance at and voting at a meeting called for that purpose. The stockholders shall be given 10 days' notice of the meeting by mail and the owners of interment spaces shall be notified of the meeting by a notice published at least 10 days in advance of the meeting date in a newspaper qualified to publish legal notices and circulated in the county in which the cemetery is located. The notice shall set forth the purpose of the meeting.

b. Upon approval of its stockholders and the owners of interment spaces, the cemetery company shall file a certified copy of the amended charter with the board, and pay the filing fees. The cemetery company, at the same time, shall make any filing required by the Division of Commercial Recording in the Department of the Treasury.

C.45:27-10 Voting rights of members.

10. a. In a cemetery company organized under this act, each owner of a grave, crypt or niche shall be a member of the cemetery company and shall have one vote for each grave, crypt or niche owned whenever voting by the members is required under the provisions of any law. Voting shall be subject to the following qualifications:

(1) If a grave, crypt or niche is owned by more than one person, then a majority of its owners shall decide among themselves who shall cast the vote.

(2) An owner shall not be entitled to vote unless all charges and assessments against the grave, crypt or niche have been paid.

(3) Proxy voting shall be permitted except that a proxy shall not be valid for more than three years after its date.

(4) Any person who owns certificates of interest or indebtedness shall have one vote for each \$250 of the face amount of the certificates.

(5) A corporation, partnership or association that owns more than one grave, crypt or niche shall have one vote for each grave, crypt or niche owned, except that it shall not have more than 100 votes.

b. The directors or trustees of a cemetery company shall hold an annual meeting and report at each annual meeting on their activities and management and the condition of the property and affairs of the cemetery company. At least 20 days before the annual meeting a notice of the meeting shall be placed at some prominent place at the office of the cemetery company and shall be published in a newspaper having general circulation in the county in which the cemetery is located.

C.45:27-11 Reinstatement in perpetuity of certain cemetery associations.

11. The charter of any cemetery association, incorporated pursuant to prior laws whose period of corporate existence has terminated by lapse of time, which has continued to operate a cemetery in which burials have been

made after corporate existence has terminated, may be reinstated in perpetuity upon the recording in the office of the clerk of the county in which the certificate of incorporation of the association is recorded, of a certificate of extension of corporate existence, executed and acknowledged by five or more owners of lots in the cemetery of the cemetery company stating, under oath, that the cemetery company has been engaged in operating a cemetery and that burials have been made in the cemetery since the termination of its corporate existence and upon the recording of the certificate, the charter of the cemetery company shall be reinstated and the corporate existence of the cemetery company shall be extended.

C.45:27-12 Maintenance and Preservation Fund.

12. a. It is the public policy of this State that a primary obligation of each cemetery company shall be the creation of a fund for the permanent maintenance and preservation of the cemetery.

b. Every cemetery company shall establish an irrevocable trust fund, called the Maintenance and Preservation Fund, the income from which shall be expended for the maintenance and preservation of the cemetery.

c. A cemetery company shall make the deposits to the Maintenance and Preservation Fund required by this act and may make additional deposits.

d. The Maintenance and Preservation Fund shall be established in a State or federally regulated financial institution having and maintaining a principal place of business within this State. The fund shall be invested in accordance with the "Prudent Investor Act," P.L. 1997, c.26 (C.3B:20-11.1 et seq.) and the income may be applied only to the maintenance of the cemetery.

e. For the purposes of this section, except as provided by regulations of the board, capital gains shall not be considered income, and shall be retained as principal.

f. The board shall supervise the creation and operation of the Maintenance and Preservation Fund and may regulate its operation and use.

C.45:27-13 Capital required for issuance of certificate of authority; fees and charges.

13. a. As a condition for the issuance of its certificate of authority to operate a cemetery, a cemetery company established after December 1, 1971 shall make an initial deposit of \$75,000 to its Maintenance and Preservation Fund. A cemetery company that operates or seeks to operate only a crematory shall not be required to make the \$75,000 initial trust fund deposit.

b. A cemetery company established before December 1, 1971 shall transfer into the Maintenance and Preservation Fund any funds established for the maintenance and preservation of the cemetery and any additional amount set by the board.

c. A cemetery company shall collect and pay into the Maintenance and Preservation Fund the following fees and charges:

- (1) on the initial sale by a cemetery company of each grave, 15% of the gross sales price;
- (2) 10% of the initial sales price of a crypt or niche in a public mausoleum or columbarium;
- (3) on bulk sales of graves, 15% of the current retail gross sale price of comparable graves;
- (4) on bulk sales of crypts or niches, 10% of the current retail gross sale price of comparable crypts or niches;
- (5) on transfer of a grave, 15% of the current gross sales price of equivalent graves, less any amounts previously paid to the Maintenance and Preservation Fund on sales of that grave;
- (6) on transfer of a crypt or niche, 15% of the current gross sales price of equivalent crypts or niches, less any amounts previously paid to the Maintenance and Preservation Fund on sales of that crypt or niche;
- (7) for each interment or for the placement of cremated human remains, 3% of the charge for the interment or placement or \$20, whichever is more;
- (8) for a foundation, base or installation, 10% of the charge for the foundation, base or installation, or \$20, whichever is more.

For the purposes of paragraphs (5) and (6) of this subsection, "transfer" shall not include sales to the cemetery company or to the next of kin.

d. Monies required to be deposited into the Maintenance and Preservation Fund shall be paid to the fund on a monthly basis. Such deposits shall be made by the last day of the month following the month in which the monies were received. In the event of an installment sale of a grave, crypt or niche, the cemetery company may make the required deposit at the time the deed is issued or when the payments are received.

e. A cemetery company may make additional payments or accept contributions into the Maintenance and Preservation Fund.

C.45:27-14 Deposit for maintenance of private mausoleum; other funding requirements.

14. a. A minimum of 10% of the gross contract price for construction and placement of any private mausoleum shall be deposited, before the structure is erected, with the cemetery company, in trust for the maintenance of the structure and the area on which it is located.

b. A cemetery or cemetery company shall not begin to use a public mausoleum for the burial of human remains until it has established a Building Maintenance Fund, an irrevocable trust fund of not less than 10% of the total cost of the structure, walkways, architect fees, building permit fees, landscaping, installation of utility lines and internal furnishings. The income from the trust fund, and the income only, shall be used for the maintenance of the structure. This provision shall not apply to temporary receiving vaults.

c. Any person may create a trust fund to be held in perpetuity or for a time to be used for the care or embellishment of any grave or crypt, mausoleum or memorial. However, the trust fund shall be consistent with regulations of the cemetery and shall not be larger than necessary to achieve the trust's purposes. If a court finds that the trust fund is excessive, it may reduce it to a reasonable sum.

d. A cemetery company may receive funds for the care or embellishment of any grave or crypt, mausoleum or memorial. It shall maintain these funds separate from the Maintenance and Preservation Fund or any other trust fund required by this act. Each fund shall be administered as agreed between the grantor and the cemetery company. The income from each of these funds shall be used for the particular purpose of the fund.

e. The funds shall be established in a State or federally regulated financial institution having and maintaining a principal place of business within this State and shall be invested in accordance with the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.). The board may adopt regulations on the operation and use of trust funds. This subsection shall not apply to a religious organization that constructs a structure for the interment of human remains.

f. The cemetery company or other trustee of a fund required by this section may collect fees for the administration of the trust allowed by law and regulations of the board.

C.45:27-15 Annual report.

15. a. Every cemetery company, other than a municipality, shall file an annual report with the board within 120 days after the close of the cemetery company's fiscal year. The report shall be filed by the cemetery company in a form established by the board, showing the extent and sources of augmentation of the Maintenance and Preservation Fund, the manner of expenditure of the income of the fund during the preceding year, and a list of the securities in which the trust funds are invested. At the time of filing the Maintenance and Preservation Fund report, a cemetery company, other than a religious corporation, shall pay a filing fee set by regulation. If the report filed is inadequate to apprise the board of the information it requires to administer the provisions of this act effectively, it shall request a supplemental report and it may order an investigation of the operations of the cemetery company. Officers and employees of a cemetery company shall exhibit the company's books, papers and securities to the board when requested and otherwise facilitate any examination of the company. Any officer or employee of a cemetery company may be required to testify under oath as to the conditions and affairs of the cemetery company.

b. Every cemetery company that contains a public mausoleum shall file an annual report in the form described in subsection a. of this section relating to its public mausoleum Building Maintenance Fund within 120 days after the end of the fiscal year.

c. If it appears to the board that the corpus of any trust fund is not being invested in accordance with the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.), the board may order the cemetery company to dispose of unauthorized securities immediately. If it appears that the Maintenance and Preservation Fund is not being maintained as required, the board may formulate a plan for the maintenance of the fund. Failure on the part of the cemetery company to implement the plan shall be a violation of this act.

d. The board, for good cause, may grant reasonable extensions for filing annual reports.

C.45:27-16 Duties, powers of cemetery company; restrictions.

16. a. A cemetery company shall:

(1) adopt reasonable regulations for the use, management and protection of the cemetery and of all interment spaces in it; for regulating the dividing marks between graves; for prohibiting or regulating the erection of structures; for preventing unsightly monuments, effigies and structures within the cemetery, and for their removal;

(2) fix reasonable charges for interment spaces, niches, products and services offered by the cemetery company; and

(3) keep its books, records and accounts so as to reflect the conduct of its business.

b. A cemetery company may:

(1) prohibit the placement of memorials, effigies or structures on parts of the cemetery and adopt reasonable regulations relating to uniformity, class, composition, material, kinds and sizes of all markers, monuments and other structures within the cemetery provided that the regulations are not established to prevent competition;

(2) sell adornments, embellishments, sod and plantings for use in the cemetery;

(3) prevent the use of interment spaces or niches for purposes that violate the cemetery restrictions and regulations;

(4) regulate the conduct of persons and prevent improper assemblages in the cemetery;

(5) reserve to the cemetery the exclusive right to open and fill graves, furnish equipment, manufacture and install foundations, set and seal crypts and vaults, seal niches and install flush memorials;

(6) regulate or prevent the introduction of embellishments or plants within the cemetery;

(7) prevent the interment in any interment space of human remains not entitled to interment there;

(8) as provided in this act, make provisions for the removal at the cost of the lot owner of any memorial, effigy or structure when either placed in violation of cemetery company rules and regulations or when it becomes dangerous or unsightly; and

(9) to the extent allowed by the regulations of the board, prohibit the interment of human remains or the placement of any memorial when there are any outstanding charges against the interment space.

c. A cemetery company, and any person engaged in the management, operation or control of a cemetery owned by a cemetery company, directly or indirectly, is specifically prohibited from engaging, directly or indirectly, in any of the following activities:

(1) the manufacture or sale of memorials;

(2) the manufacture or sale of private mausoleums;

(3) the manufacture or sale of vaults, including vaults installed in a grave before or after sale and including vaults joined with each other in the ground; and

(4) the conduct of any funeral home or the business or profession of mortuary science; provided that crematoriums operated in conjunction with funeral homes prior to December 1, 1971 are excepted from the provisions of this paragraph (4).

C.45:27-17 Copy of survey map, filing with board.

17. a. A copy of a survey or map of land to be used for cemetery purposes shall be filed with the board. The filing shall constitute dedication of the land for cemetery purposes.

b. Before graves are sold, the part of the cemetery, including those graves, shall be surveyed and a map prepared showing the location of the graves with those roadways, paths and building areas as the cemetery company directs. A map of the land shall be kept at the office of the cemetery company. The map shall be made available for inspection by owners of interment spaces.

c. A cemetery company may amend a map to include areas not previously laid out or to change the layout of plots not sold. Existing roadways and walks to graves already sold shall not be abandoned but may be altered as long as similar access to existing interment spaces is not denied. Paths may be renovated or reduced in size if the minimum width specified by regulation is maintained. The amended map shall be filed with the board.

C.45:27-18 Filing requirements with board; public information.

18. a. Before conducting any business with the public, a cemetery company shall file with the board the name and address of the cemetery company and a copy of its regulations and its charges for services. New and amended

regulations and changes in charges for services shall be filed before they take effect. Each filing shall be accompanied by the filing fee set by regulation.

b. The rules, regulations and charges for services shall be suitably printed and shall be conspicuously posted by the cemetery company in each of its public offices and on cemetery grounds.

C.45:27-19 Record of interment, placement of cremains.

19. a. A cemetery company shall keep a record of every interment and placement of cremated human remains, which shall include the date, the name and age of the person, the cause of death when shown on the burial permit, the location of the burial or disposition, and the name and address of the funeral director.

b. A record shall be kept by a cemetery company of the owner of each interment space that has been conveyed by the cemetery company and of each transfer of an interment space to which the cemetery company has consented. A transfer of an interment space or a right of burial shall not be complete or effective until it is recorded on the books of the cemetery company and any fees required are paid.

c. The instrument of conveyance of a interment space shall include the actual amount paid for it and a description of the interment space sufficient to identify it, including its number as it appears on the cemetery map, and any other information required by regulation of the board. The instrument shall show the dimensions of the interment space.

d. A cemetery company that performs a cremation shall keep a record indicating the date and the recipient of the cremated remains.

C.45:27-20 Exemption from certain taxes.

20. a. Cemetery companies shall be exempt from the payment of any real estate taxes, rates and assessments or personal property taxes on lands and equipment dedicated to cemetery purposes. Cemetery companies shall be exempt from business taxes, sales taxes, income taxes, and inheritance taxes.

b. Land dedicated to cemetery purposes owned by any person shall be exempt from all taxes, rates or assessments.

c. Charges paid to a cemetery for an interment space shall be exempt from the payment of sales or use tax.

d. Trust funds, and the income from trust funds, held by a cemetery company shall be exempt from taxation and assessment, and sale, seizure or sale for collection of judgments against the cemetery company.

e. Land dedicated to cemetery purposes and structures, buildings, and equipment used for the maintenance of that land or the operation of a cemetery shall be exempt from sale for collection of judgments. Income derived from cemetery property other than income required by law to be deposited in trust funds or used for a particular purpose may be taken and used for the payment

of a judgment against a cemetery company. If a judgment against a cemetery company cannot be paid, a court may also order the issuance of bonds, notes or other evidences of indebtedness by the cemetery company. This subsection shall not apply to liens existing on land before it is dedicated to cemetery purposes.

f. A street or road shall not be laid through any land of a cemetery company that is actually in use for cemetery purposes without the consent of the cemetery company, unless otherwise provided by law.

g. When bankruptcy, receivership or other court proceeding necessitates the selling of cemetery company lands, the court shall require the purchaser to incorporate as a cemetery company.

h. A receiver or trustee of a cemetery company appointed by a court may issue bonds, notes or other evidence of indebtedness that include a provision allowing the holders to select the governing body of the cemetery company until they are paid.

C.45:27-21 Dedication of property to cemetery purposes.

21. a. Dedication of property to cemetery purposes pursuant to this act shall not be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to use of property. It shall be expressly permitted in respect for the dead and as provision for the burial of human remains and as a duty to, and for the benefit of, the general welfare.

b. After property is dedicated to cemetery purposes by a cemetery company, neither the dedication nor the title of the interment space owner shall be affected by the dissolution of the cemetery company by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise except as provided in this act and by law.

C.45:27-22 Control of funeral, disposition of remains.

22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with N.J.S.3B:10-21. If the decedent has not left a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition of the human remains shall be in the following order, unless other directions have been given by a court of competent jurisdiction:

- (1) The surviving spouse of the decedent.
- (2) A majority of the surviving adult children of the decedent.
- (3) The surviving parent or parents of the decedent.
- (4) A majority of the brothers and sisters of the decedent.

(5) Other next of kin of the decedent according to the degree of consanguinity.

(6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

(1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or

(2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. A person who signs an authorization for the funeral and disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

e. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

C.45:27-23 Removal of remains from interment space.

23. a. Except as otherwise provided in this section, or pursuant to court order, human remains shall not be removed from an interment space unless:

(1) the surviving spouse, adult children and the owner of the interment space authorize removal in writing;

(2) removal is authorized by a State disinterment permit issued by the local board of health; and

(3) the cemetery finds that removal is feasible.

b. No disinterment permit is required:

(1) for the temporary removal or repositioning of vaulted human remains to allow for the deepening of an interment space within the same lot;

(2) for the transfer of temporarily stored remains from the place of temporary storage to the place of final interment within the same cemetery in accordance with applicable law;

(3) for the removal of cremated human remains. However, prior consent shall be obtained from the interment space owner and the person having the right to control the removal of the decedent's remains.

c. Human remains buried on property that is not part of a cemetery may be removed by the owner of the property provided that removal is in compliance with applicable law and the remains are then properly re-buried in a cemetery.

d. A person who signs an authorization for the disinterment of human remains warrants the truth of the facts stated and the authority to order the disinterment. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disinterment in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disinterment. An action against a cemetery company relating to the disinterment of human remains shall not be brought more than one year from the date of disinterment.

C.45:27-24 Removal of memorial, embellishment, impediment.

24. a. A cemetery company may remove any authorized memorial, embellishment or impediment for safety reasons. Before removal, the cemetery company shall take photographs of the memorial and its condition and shall retain them in its permanent records. Within 30 days after removal, the cemetery company shall notify the interment space owner in writing of the removal at the address on file with the cemetery company. The notice shall include a provision advising that, within six months of the notice, the interment space owner may apply to the board for appropriate relief.

b. A cemetery company may remove any memorial, embellishment or impediment that was placed in violation of the regulations of the cemetery. The cemetery may recover the cost of the removal.

c. Upon removal of a memorial, embellishment or impediment, the cemetery company shall store it in a reasonably secure manner. If after one year, the interment space owner has not taken possession of the memorial, embellishment or impediment, the cemetery may dispose of it. The cemetery company shall notify the board in writing 90 days prior to disposal.

d. A cemetery company may not renovate a section or area of the cemetery necessitating the removal of memorials from an interment space without board approval. The board may require specific actions or procedures by the cemetery company for the proposed renovation. The cemetery company shall notify the interment space owner of the proposed renovations 30 days before the action. Publication in a local newspaper circulating in the county in which

the interment space is located and posting on the grounds shall be considered sufficient notice. Repairs or improvements done at the request of the interment space owner do not constitute renovation work which requires board approval.

e. Site work necessary to repair or restore any part of a cemetery as an emergency response to vandalism, damage by weather conditions or other acts of God shall not constitute planned renovation work.

f. Memorials may be temporarily removed from interment spaces in order to provide access for equipment and personnel to perform openings and general debris clean-up. Memorials shall be reinstalled promptly.

C.45:27-25 Consent of municipality for establishment, enlargement of cemetery.

25. a. A cemetery shall not be established or enlarged in any municipality without first obtaining the consent of the municipality by resolution.

b. No more than five cemeteries may be established in any one municipality, and not more than 3% of the area of any municipality shall be devoted to cemetery purposes.

c. A cemetery shall not be established or expanded to exceed 250 acres at any one location.

d. The governing body of a municipality, by resolution, may waive the limitations of subsection b. or c. of this section if it finds that there is a public need for additional cemetery lands and that it is in the public interest to waive them.

e. A cemetery company shall not dedicate additional land to cemetery purposes without board approval.

C.45:27-26 Issuance of certificates.

26. If the board approves, a cemetery company may issue certificates with a fixed face value and a specified interest rate to pay for land acquired for cemetery purposes, for the initial improvements to that land, and for subsequent capital improvements. The board shall review the dollar amount and terms of the certificates so as to assure the financial soundness of the cemetery company.

C.45:27-27 Permit for public mausoleum.

27. a. A public mausoleum shall not be constructed without obtaining a permit from the construction official of the municipality in which it is to be constructed. Failure to issue a permit is reviewable by the appropriate construction board of appeals established pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

b. Construction shall not begin until detailed plans and specifications of the structure have been approved by the State Department of Community Affairs and the certificate of approval is filed in the office of the municipal enforcing agency where the structure is to be constructed. The State Department

of Community Affairs shall not grant a certificate of approval unless it is satisfied that the proposed structure can be operated without constituting a hazard to public health or safety.

c. Construction of the structure shall be under the supervision of the municipal construction official, who shall see that the approved plans and specifications are complied with. No departure from the original plans and specifications shall be permitted unless an amended certificate of approval is granted and filed with the construction official of the municipality where the mausoleum is to be constructed.

d. A structure constructed under the provisions of this section shall not be used for burial until the construction official of the municipality has issued a certificate indicating that the plans and specifications as filed have been complied with fully and the Building Maintenance Fund for the structure has been established.

e. The Department of Community Affairs shall adopt regulations concerning the construction of public mausoleums, which shall conform with the definition of public mausoleum as defined by this act. The regulations shall be the standards adopted in the subcodes of the Uniform Construction Code, or other national model codes or standards, but the commissioner may adopt additional standards if, after a public hearing, the commissioner finds that they are necessary to protect the public interest. A municipality may enact zoning ordinances which provide for reasonable height and setback requirements in keeping with standards established for property immediately abutting a cemetery, but any other ordinance regulating the construction of mausoleums shall be of no effect.

f. Private mausoleums shall be constructed in accordance with applicable industry construction code standards and regulations of the cemetery.

C.45:27-28 Transfer of interment space, niche.

28. a. When a cemetery transfers an interment space or niche and records the transfer, the person or persons to whom it was transferred become the owner of the interment space or niche. The conveyance issued by a cemetery shall indicate whether the cemetery company is transferring title to the interment space or niche or only a right of burial in it. The conveyance may:

(1) provide that the owner take title subject to existing and future reasonable regulations of the cemetery; and

(2) contain other reasonable restrictions on use or transfer consistent with this act.

b. Except as limited by subsection c. of this section, the owner of an interment space or an interest in one in a cemetery may transfer the space or interest to any person or to the cemetery company. Transfers may be made on agreed conditions, provided the conditions are recorded in the office of

the cemetery company. The cemetery company shall record a cemetery transfer in its records when a document of transfer is presented to the cemetery company and any other requirements imposed by law or regulations of the cemetery company are met. The transfer shall be effective on recordation by the cemetery company.

c. After human remains have been buried in a grave or crypt, that grave or crypt shall not be transferred except as follows:

(1) Ownership of the grave or crypt may be transferred by will if it is identified specifically in the will rather than by a residuary clause or by general reference to real property. Otherwise, on the death of the owner, ownership shall descend in the order listed below:

(a) to the surviving spouse and the owner's children, if any, per stirpes, as equal tenants in common;

(b) if there is no surviving spouse, to the children per stirpes as equal tenants in common;

(c) if there is no surviving spouse nor surviving children, then to the owner's parents as equal tenants in common;

(d) if there is no surviving spouse, children or parents, then to the owner's siblings as equal tenants in common;

(e) if there is no surviving spouse, children, parents or siblings, then ownership in the grave or crypt shall pass to the owner's next of kin as tenants in common pursuant to the laws of intestacy;

(f) Notwithstanding subparagraphs (a) through (e) of this paragraph (1), if an owner dies leaving a surviving spouse, but having surviving children from a prior marriage or relationship, those children and the surviving spouse shall be owners of the grave or crypt as tenants in common.

(2) If the grave or crypt is owned by more than one person, one owner's share may be transferred to another owner.

(3) Ownership of the grave or crypt may be transferred to any heir at law of the person buried in the space.

(4) The owner may convey the grave or crypt in trust to a bank or trust company or to the cemetery company for the benefit of the owner of the grave or crypt and the protection of the human remains already buried in it, pursuant to the terms of the deed of trust. Acceptance of the conveyance in trust by the cemetery company shall require a majority vote of its governing board.

(5) If additional burials are permitted to be made in the grave or crypt, the grave or crypt may be transferred to allow for those burials.

d. A cemetery company shall maintain records of transfers of ownership of interment spaces. Records shall be kept in the manner specified by the board in its regulations. Records shall be indexed both by the number of each interment space and by the name of each owner.

C.45:27-29 Multiple owners of interment space.

29. a. When there are two or more owners of an interment space:

- (1) each individual owner's interest may be transferred only by that owner or that owner's authorized representative;
- (2) each individual owner has a right of interment in the space.

b. When there are two or more owners of an interment space, they may designate one or more of the co-owners to represent them by filing written notice of the designation with the cemetery company. If such a notice has been filed, the cemetery company shall follow the direction of the representative as to interment in the space, and in regard to memorials, embellishments and care for the interment space. In the absence of that notice the cemetery company may rely on the direction of any co-owner as to burial, memorials, embellishments or care and shall not be liable to any person for doing so.

C.45:27-30 Regulations on interment.

30. a. A cemetery company may adopt reasonable regulations on interment. In the absence of regulation, the cemetery company shall allow human remains of the following persons to be interred in an available interment space:

- (1) a deceased person who at the time of death was an owner of the interment space;
- (2) the spouse of the deceased person who owned the interment space at the time of death; and
- (3) any other person authorized by a written directive of the designated owner of the interment space as provided in subsection b. of section 29 of this act, or if there is no designated owner, by the written directive of any owner.

b. The right of a person to be interred in an interment space may be waived in writing. The right terminates if the person is interred elsewhere.

c. If more persons have a right to be interred in an interment space than may be interred there, any person with a right to interment in the interment space may be interred in it even though that will make the interment space unavailable to others.

d. A person who signs an authorization for the disposition of human remains warrants the truth of the facts stated, the identity of the human remains and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition. An action against a cemetery company relating to the disposition of human remains left in its temporary custody shall not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

C.45:27-31 Maintenance of interment spaces.

31. a. Owners of interment spaces, or other interested persons, may maintain their own interment spaces, or provide for maintenance by an independent contractor provided that the maintenance is subject to the supervision of the management of the cemetery company to insure compliance with the rules and regulations of the cemetery.

b. The cemetery company may not charge for maintenance by others. The cemetery company may impose a reasonable fee for actual supervision of maintenance if the fee has been filed with the board.

C.45:27-32 Resale of interment space.

32. a. Except as provided in subsection b. of this section, a person shall not purchase an interment space for the sole purpose of resale, and a cemetery company shall not sell an interment space to a person whom it reasonably should know is purchasing an interment space for the purpose of resale. The board may adopt regulations to enforce this subsection.

b. A membership or religious corporation or unincorporated association or society may purchase interment spaces in bulk for the purpose of resale, transfer or assignment of interment rights provided that:

(1) if the purchase is for 17 interment spaces or more, it has received approval from the board to do so;

(2) it sells, gives or assigns the interment spaces only to its members and the interment spaces are intended for the use of its members and their families;

(3) at the time it sells, gives or assigns an interment space, it provides notification to the cemetery company for recording;

(4) it designates in writing to the cemetery company an agent with authority to consent to burials in interment spaces owned by it; and

(5) it makes the payments to the Maintenance and Preservation Fund required by section 13 of this act.

c. If the corporation, association or society fails to meet its obligations under subsection b. of this section, the cemetery company may reclaim the unoccupied interment spaces owned by it in the manner and with the restrictions set by the board.

C.45:27-33 Reclamation of grave, crypt.

33. a. A cemetery company may reclaim a grave or crypt if:

(1) the cemetery company sold the grave or crypt before December 1, 1971;

(2) no provision has been made for the adequate maintenance of the grave or crypt;

(3) no burial has been made in the grave or crypt; and

(4) no burial has been made for 30 years in the plot that includes the grave or crypt.

For the purposes of this section, "adequate maintenance" has been provided if the grave or crypt was sold with perpetual care, endowed care, or a similar level of care, or if the owner of the grave or crypt has made other provision for that care.

b. To reclaim a grave or crypt, a cemetery company shall:

(1) make a diligent effort to locate the owners and notify them that they may prevent the cemetery from reclaiming the grave or crypt by sending a written objection to the cemetery company within 30 days;

(2) if the cemetery company cannot locate the owners, publish a notice in a newspaper circulating in the county in which the grave or crypt is located, directed to the owners as registered in the cemetery company's records, containing the names of each deceased person buried in the plot that includes the grave or crypt and date of each burial, where such information is ascertainable. The notice shall advise that if the owners do not send a written objection within 30 days the grave or crypt will be subject to resale.

c. If a written objection has not been filed with the cemetery within 30 days after notice or publication, the cemetery may sell the grave or crypt. The sales price less sales commissions and expenses of sale, but in no event less than three-fourths of the gross sales price, shall be deposited in the Maintenance and Preservation Fund.

d. At any time, a person proving ownership of a grave or crypt reclaimed and sold in accordance with this section may either agree to take a comparable grave or crypt in the cemetery or may make application to the board for an order directing the cemetery company to reimburse the owner the proceeds of the sale that were deposited into the Maintenance and Preservation Fund.

C.45:27-34 Lease, transfer of land, interest in land.

34. a. A cemetery may lease or transfer any land or interest in land dedicated to cemetery purposes if:

(1) it has not conveyed any part of the land as graves;

(2) it determines that the land or the interest in the land to be transferred is not necessary or not suitable for burial purposes or it determines that the land to be leased will not be necessary for burial purposes during the term of the lease; and

(3) the land is owned by a cemetery company and the board approves the transaction as made in good faith and for fair consideration.

b. The cemetery may transfer land in which any person has acquired a right of burial, if:

(1) the cemetery either refunds to the person who has the right of burial the amount paid for the right or conveys to the person who has the right of burial substantially similar graves in the cemetery; and

(2) the land is owned by a cemetery company and the board approves the transaction as made in good faith and for fair consideration.

c. A cemetery may transfer land in which human remains have been buried only if the cemetery:

(1) receives consent from the owner of each grave in which human remains have been buried or an order from the Superior Court to remove the human remains;

(2) removes the human remains and reburies them in substantially similar graves in the cemetery or in another cemetery and assumes the responsibility and expense for removal and reburial;

(3) removes any property of the owner from the grave and gives it to the owner; and

(4) if owned by a cemetery company, obtains the written consent of the board.

d. The Superior Court shall not approve the removal of human remains from lands to be transferred unless notice and an opportunity to be heard in opposition has been given to the owners of all affected graves. If the owner of a grave is not known or cannot be located, the court may order notice by publication.

e. The deed of conveyance for any transfer of cemetery land under this section shall include a perpetual prohibition on any use of the land, directly or indirectly, for any of the purposes or uses which cemetery companies are specifically prohibited from engaging in by this act. Any lease of cemetery land under this section shall prohibit any use of the land, directly or indirectly, for any of the purposes or uses which cemetery companies are specifically prohibited from engaging in by this act. The board shall order not less than 15% of the proceeds of the sale or lease deposited in the Maintenance and Preservation Fund.

f. If the transfer of land results from condemnation, the responsibility and expense for removal and reburial shall be borne by the condemnor, not by the cemetery.

C.45:27-35 License required for cemetery salesperson.

35. a. A license from the board is required for any natural person to be compensated to act as a cemetery salesperson for interment spaces in cemeteries operated by cemetery companies or for goods or services provided by cemetery companies.

(1) Each salesperson license shall state the name and address of each cemetery company with which the salesperson is associated.

(2) A salesperson shall produce the license for inspection when requested during sales activities, and shall retain possession of the license until it expires or is canceled, revoked or suspended.

(3) A copy of the license shall be posted by the cemetery company in each of its offices.

b. No municipality of this State shall require a licensed salesperson to obtain a municipal license to sell interment spaces or cemetery goods or services.

c. The following may sell cemetery property without a cemetery salesperson license:

(1) The owner of an interest in an interment space, or a person acting for the owner, making an occasional sale of the interment space;

(2) An officer, manager or employee of a cemetery company engaging in sales activities whose primary responsibility is other than sales activities; or

(3) A receiver, trustee in bankruptcy or other person acting under court order for a trustee selling under a deed of trust.

C.45:27-36 Issuance, renewal of license.

36. A cemetery salesperson license shall be issued or renewed for a period established by the board by regulation.

C.45:27-37 Application for cemetery salesperson license.

37. a. An applicant for a cemetery salesperson license shall file a written application on the form prescribed by the board. The application fee prescribed by the board by regulation shall accompany the application.

b. The board shall investigate the qualifications of each applicant for a cemetery salesperson license and shall issue a salesperson license if:

(1) the board finds that the applicant is 18 years or older, of good moral character, and has not been convicted of a crime which would allow the board to deny the application pursuant to P.L. 1968, c.282 (C.2A:168A-1 et seq.);

(2) the application complies with the regulations;

(3) the applicant paid the license fee prescribed by regulation; and

(4) the applicant is not barred from making cemetery sales by other employment.

c. The board, upon receipt of a completed application form and appropriate fees, and prior to receipt of the criminal history background check, may issue a temporary license valid for 60 days which the board may extend for additional periods not exceeding 30 days each.

C.45:27-38 Action instituted by board.

38. The board may institute an action in the name of the State in the Superior Court for the appointment of a receiver, injunctive or other relief

to protect the public interest, or to prohibit the violation of this act or the orders, rules or regulations of the board. Relief shall not be limited or barred by the imposition of any penalties imposed by the board. The receivership shall be discharged as soon as the condition which caused the suspension has been corrected.

39. Section 1 of P.L.1974, c.46 (C.45:1-3.1) is amended to read as follows:

C.45:1-3.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the New Jersey Cemetery Board, the State Board of Social Work Examiners and the State Board of Physical Therapy Examiners.

C.3B:10-21.1 Appointment of person to control funeral, disposition of remains.

40. Prior to probate, a decedent's appointment of a person in a will to control the funeral and disposition of human remains may be carried out in accordance with section 22 of P.L.2003, c.261 (C.45:27-22). If known to them, a person named executor in a will shall notify such a person of their appointment and advise them of what financial means are available to carry out the funeral and disposition arrangements.

C.45:7-95 Funeral, disinterment, disposition of remains; written authorization.

41. A funeral director may permit the funeral, disinterment or disposition of human remains on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the funeral, disinterment or disposition as provided by sections 22 and 23 of P.L.2003, c.261 (C.45:27-22 and C.45:27-23). A cemetery or funeral director shall not be liable for the funeral, disinterment or disposition pursuant to this authorization

unless it had reasonable notice that the person did not have the right to control the funeral, disinterment or disposition. If there are no known living relatives, a funeral director may rely on the written authorization of any person acting in good faith on behalf of the decedent.

A person who signs an authorization for the funeral, disinterment or disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed, and the authority to order the funeral, disinterment or disposition. A cemetery or funeral director shall not be liable for the funeral, disinterment or disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the funeral, disinterment or disposition.

Repealer.

42. N.J.S.8A:1-1 et seq., section 2 of P.L.1979, c.255 (C.8A:3-14.1) and P.L.2001, c.439 (C.8A:3-14.2) are repealed.

43. This act shall take effect on the 90th day following enactment.

Approved January 14, 2004.

CHAPTER 262

AN ACT concerning membership of the Drug Utilization Review Board and amending P.L.1998, c.41.

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

1. Section 2 of P.L.1998, c.41 (C.30:4D-17.17a) is amended to read as follows:

C.30:4D-17.17a Drug Utilization Review Board.

2. a. There is established the Drug Utilization Review Board in the department to advise the department on the implementation of a drug utilization review program pursuant to P.L.1993, c.16 (C.30:4D-17.16 et seq.) and this section. The board shall establish a Senior Drug Utilization Review Committee to address the specific prescribing needs of the elderly and an AIDS/HIV Drug Utilization Review Committee to address the specific prescribing needs of persons with AIDS/HIV, in addition to such other committees as it deems necessary. It shall be the responsibility of each committee to evaluate the specific prescribing needs of its beneficiary population, and to submit recommendations to the board in regard thereto.

The board shall consist of 17 members, including the Commissioners of Human Services and Health and Senior Services or their designees, who shall serve as nonvoting ex officio members, and 15 public members. The public members shall be appointed by the Governor with the advice and consent of the Senate. The appointments shall be made as follows: six persons licensed and actively engaged in the practice of medicine in this State, including one who is a psychiatrist and at least two who specialize in geriatric medicine and two who specialize in AIDS/HIV care, one of whom who is a pediatric AIDS/HIV specialist, four of whom shall be appointed upon the recommendation of the Medical Society of New Jersey and two upon the recommendation of the New Jersey Association of Osteopathic Physicians and Surgeons; one person licensed as a physician in this State who is actively engaged in academic medicine; four persons licensed in and actively practicing or teaching pharmacy in this State, who shall be appointed from a list of pharmacists recommended by the New Jersey Pharmacists Association, the New Jersey Council of Chain Drug Stores, the Garden State Pharmacy Owners, Inc., the New Jersey Society of Hospital Pharmacists, the Academy of Consultant Pharmacists and the College of Pharmacy of Rutgers, The State University; one additional health care professional; two persons certified as advanced practice nurses in this State, who shall be appointed upon the recommendation of the New Jersey State Nurses Association; and one member to be appointed upon the recommendation of the Pharmaceutical Research and Manufacturers of America.

Each member of the board shall have expertise in the clinically appropriate prescribing and dispensing of outpatient drugs.

b. All appointments to the board shall be made no later than the 60th day after the effective date of this act. The public members shall be appointed for two-year terms and shall serve until a successor is appointed and qualified, and are eligible for reappointment; except that of the public members first appointed, eight shall be appointed for a term of two years and five for a term of one year.

c. Vacancies in the membership of the board shall be filled in the same manner as the original appointments were made but for the unexpired term only. Members of the board shall serve with compensation for the time and expenses incurred in the performance of their duties as board members, as determined by the Commissioners of Human Services and Health and Senior Services, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

d. The board shall select a chairman from among the public members, who shall serve a one-year term, and a secretary. The chairman may serve consecutive terms. The board shall adopt bylaws. The board shall meet at least quarterly and may meet at other times at the call of the chairman. The

board shall in all respects comply with the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). No motion to take any action by the board shall be valid except upon the affirmative vote of a majority of the authorized membership of the board.

e. The duties of the board shall include the development and application of the criteria and standards to be used in retrospective and prospective drug utilization review. The criteria and standards shall be based on the compendia and developed with professional input in a consensus fashion. There shall be provisions for timely reassessments and revisions as necessary and provisions for input by persons acting as patient advocates. The drug utilization review standards shall reflect the local practices of prescribers, in order to monitor:

- (1) therapeutic appropriateness;
- (2) overutilization or underutilization;
- (3) therapeutic duplication;
- (4) drug-disease contraindications;
- (5) drug-drug interactions;
- (6) incorrect drug dosage;
- (7) duration of drug treatment; and
- (8) clinical drug abuse or misuse.

The board shall recommend to the department criteria for denials of claims and establish standards for a medical exception process. The board shall also consider relevant information provided by interested parties outside of the board and, if appropriate, shall make revisions to the criteria and standards in a timely manner based upon this information.

f. The board, with the approval of the department, shall be responsible for the development, selection, application and assessment of interventions or remedial strategies for prescribers, pharmacists and beneficiaries that are educational and not punitive in nature to improve the quality of care, including:

- (1) Information disseminated to prescribers and pharmacists to ensure that they are aware of the duties and powers of the board;
- (2) Written, oral or electronic reminders of patient-specific or drug-specific information that are designed to ensure prescriber, pharmacist and beneficiary confidentiality, and suggested changes in the prescribing or dispensing practices designed to improve the quality of care;

(3) The development of an educational program, using data provided through drug utilization review as a part of active and ongoing educational outreach activities to improve prescribing and dispensing practices as provided in this section. These educational outreach activities shall include accurate, balanced and timely information about drugs and their effect on a patient. If the board contracts with another entity to provide this program, that entity shall publicly disclose any financial interest or benefit that accrues to it from the products selected or used in this program;

- (4) Use of face-to-face discussion between experts in drug therapy and the prescriber or pharmacist who has been designated by the board for educational intervention;
 - (5) Intensified reviews or monitoring of selected prescribers or pharmacists;
 - (6) The timely evaluation of interventions to determine whether the interventions have improved the quality of care; and
 - (7) The review of case profiles prior to the conducting of an intervention.
2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 263

AN ACT concerning the enrollment of officers and employees of interstate compact agencies in the Public Employees' Retirement System of New Jersey and the purchase of service credit in that system and amending P.L.1954, c. 84 and P.L.1963, c.19.

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

1. Section 73 of P.L.1954, c.84 (C.43:15A-73) is amended to read as follows:

C.43:15A-73 Eligible employees of certain governmental entities, enrollment in Public Employees' Retirement System.

73. a. (1) The Public Employees' Retirement System is hereby authorized and directed to enroll eligible employees of the New Jersey Turnpike Authority, Palisades Interstate Park Commission, Interstate Environmental Commission, the Delaware River Basin Commission and the Delaware River Joint Toll Bridge Commission.

In the case of the Delaware River Joint Toll Bridge Commission, the eligible employees shall be only those who are employed on the free bridges across the Delaware river, under the control of said commission, or who are members of the retirement system at the time they begin employment with the commission.

The said employees shall be subject to the same membership, contribution and benefit provisions of the retirement system as State employees.

(2) In addition to those agencies named in paragraph (1) of this subsection, the Public Employees' Retirement System is hereby authorized and directed to enroll an eligible officer or employee, excluding a police officer or firefighter,

of a bi-state or multi-state agency established pursuant to an interstate compact to which this State is a party, if the officer or employee is a resident of this State at the time of appointment or employment with the agency and the governing body of the agency has adopted a resolution, and filed a certified copy of the resolution with the board of the retirement system, that permits such an officer or employee to enroll. The enrollment shall be at the option of the officer or employee so permitted. A filed resolution shall define each category of officer or employee who may enroll in the retirement system, and the resolution may apply to those officers or employees initially appointed or employed on or after January 1, 2002.

The resolution shall be in a form prescribed by the Division of Pensions and Benefits. The election by an officer or employee to enroll in the retirement system shall be made within 90 days of the date of eligibility. Once enrolled, the officer or employee shall remain a member of the retirement system during the period of continuous service with the agency. The officer or employee shall not be enrolled simultaneously in more than one retirement system based on the same service with the agency.

An enrolled officer or employee who was appointed or employed on or after January 1, 2002 shall receive credit for service with the agency rendered prior to enrollment if there is paid into the appropriate fund of the retirement system at the time of enrollment, either by the agency or by the officer or employee, the full purchase amount required by applying the factor, supplied by the actuary, as being applicable to the officer's or employee's age at the time of purchase, to the officer's or employee's salary at the time of purchase or to the highest annual compensation for service in this State for which contributions were made during any prior fiscal year of membership in the retirement system, whichever is greater. An officer or employee who was a member of the retirement system on the date continuous service with the agency began and who has not withdrawn the employee contributions from the system, shall participate in the retirement system under the former membership. A bi-state or multi-state agency that files a resolution pursuant to this paragraph shall for all purposes of P.L.1954, c.84 (C.43:15A-1 et seq.) be deemed an employer, and its eligible employees, both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of P.L.1952, c.215 (C.43:3A-1 et seq.), P.L.1958, c.143 (C.43:3B-1 et seq.), P.L.1968, c.23 (C.43:3C-1 et seq.), P.L.1981, c.213 (C.43:3C-4 and 43:3C-5), P.L.1986, c.188 (C.43:3C-9), and P.L.1997, c.113 (C.43:3C-9.1 et seq.), as are applicable to State employees. As a condition, the agency shall consent to participation in the New Jersey agreement with the Social Security Administration.

b. The State University of New Jersey, as an instrumentality of the State, shall, for all purposes of this act, be deemed an employer and its eligible

employees, both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as are applicable to State employees and for all purposes of this act employment by the State University of New Jersey after April 16, 1945, and for the purposes of chapter 3 of Title 43 of the Revised Statutes any new employment after January 1, 1955, shall be deemed to be and shall be construed as service to and employment by the State of New Jersey.

c. The Compensation Rating and Inspection Bureau, created and established pursuant to the provisions of R.S.34:15-89, shall, for all purposes of this act, be deemed an employer and its eligible employees, both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as both are applicable to State employees.

The retirement system shall certify to the Commissioner of Banking and Insurance and the Commissioner of Banking and Insurance shall direct the Compensation Rating and Inspection Bureau to provide the necessary payments to the retirement system in accordance with procedures established by the retirement system. Such payments shall include (1) the contributions and charges, similar to those paid by other public agency employers, to be paid by the Compensation Rating and Inspection Bureau to the retirement system on behalf of its employee members, and (2) the contributions to be paid by the Compensation Rating and Inspection Bureau to provide the past service credits up to June 30, 1965 for these members, both veterans and nonveterans, who enroll before July 1, 1966.

d. The New Jersey Sports and Exposition Authority, created and established pursuant to the "New Jersey Sports and Exposition Authority Law," P.L.1971, c.137 (C.5:10-1 et seq.) shall for all purposes of this act, be deemed an employer and its eligible employees both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as are applicable to State employees.

(1) Eligible employees as used herein shall not include persons who are not classified as salaried, or who are compensated on an hourly or per diem basis, or whose employment is normally covered by other retirement systems to which the authority makes contributions.

(2) Eligible employees previously permitted to enroll in the retirement system shall redeposit the contributions previously made by them and all service credit shall then be restored and future contributions made at the date of contribution as originally assigned. The authority shall redeposit the employer payments it had made, with interest to the date of redeposit.

e. The New Jersey Transit Corporation created and established pursuant to the "New Jersey Public Transportation Act of 1979," P.L.1979, c.150 (C.27:25-1 et seq.) shall for all purposes of this act, be deemed an employer and its eligible employees both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as are applicable to State employees. Eligible employees as used herein means only those individuals who are members of the Public Employees' Retirement System or any other State-administered retirement system immediately prior to their initial employment by the corporation.

f. (1) The Casino Reinvestment Development Authority, created and established pursuant to P.L.1984, c.218 (C.5:12-153 et seq.), the New Jersey Urban Development Corporation, created and established pursuant to P.L.1985, c.227 (C.55:19-1 et seq.), the South Jersey Food Distribution Authority, created and established pursuant to P.L.1985, c.383 (C.4:26-1 et seq.), the New Jersey Development Authority for Small Businesses, Minorities and Women's Enterprises, created and established pursuant to P.L.1985, c.386 (C.34:1B-47 et seq.), and the Catastrophic Illness in Children Relief Fund Commission, created and established pursuant to P.L.1987, c.370 (C.26:2-148 et seq.) shall each, for all purposes of this act, be deemed an employer and eligible authority, corporation, or commission. Employees, both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as are applicable to State employees.

(2) The current or former employees of the authorities, the corporation, and the commission may purchase credit for all service with the authority, corporation, or commission rendered prior to the effective date of this amendatory and supplementary act, P.L.1990, c.25 (C.43:15A-73.2 et al.), if that service would otherwise be eligible for credit in the retirement system. This purchase shall be made in the same manner and shall be subject to the same terms and conditions provided for the purchase of previous membership service by section 8 of P.L.1954, c.84 (C.43:15A-8). The authority, corporation, or commission shall pay the unfunded liability as determined by the actuary for prior service purchased by its employees in accordance with a schedule approved by the actuary. This obligation of the authority, corporation, or commission shall be known as the accrued liability for prior service credit.

(3) For any employee of the authorities or of the corporation or commission who is in service with the authority, corporation, or commission on the effective date of this amendatory and supplementary act, P.L.1990, c.25 (C.43:15A-73.2 et al.), the age of enrollment for the purposes of the member contribution rate under section 25 of P.L.1954, c.84 (C.43:15A-25) shall be the age of the employee on the date the continuous service with the authority began. Any

employee who was a member of the retirement system on the date continuous service with the authority, corporation, or commission began but whose membership expired before the effective date of participation by the authority, corporation, or commission in the retirement system, and who has not withdrawn the employee contributions from the system, shall participate in the retirement system under the former membership and shall contribute to the system at the rate applicable to the former membership.

g. A subsidiary corporation or other corporation established by the Delaware River Port Authority pursuant to subdivision (m) of Article I of the compact creating the authority (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-146), shall, for all purposes of this act, be deemed an employer and its eligible employees, both veterans and nonveterans, shall be subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as are applicable to State employees. Employees of the subsidiary or other corporation eligible for participation in the retirement system under this subsection shall include only persons who are employees of the South Jersey Port Corporation on the effective date of P.L.1997, c.150 (C.34:1B-144 et al.) and are re-employed by the subsidiary or other corporation within 365 days of the effective date.

2. Section 2 of P.L.1963, c.19 (C.43:15A-73.1) is amended to read as follows:

C.43:15A-73.1 Credit for employment in other states, federal government or military service; limitation; payments; pro rata credit upon retirement.

2. A member may file a detailed statement of public employment in other states or with the United States Government which would be eligible for credit in a State-administered retirement system if the employment was with a public employer in this State, or of military service in the Armed Forces of the United States, or of service resulting from initial appointment or employment on or after January 1, 2002 with a bi-state or multi-state agency established pursuant to an interstate compact to which the State is a party which would be eligible for credit in a State-administered retirement system if the employment was with a public employer in this State, rendered prior to becoming a member, for which the member desires credit, and of such other facts as the retirement system may require. The member may purchase credit for all or a portion of the service evidenced in the statement up to the nearest number of years and months, but not exceeding 10 years, provided however, that a member purchasing that maximum credit may purchase up to five additional years for additional military service qualifying the member as a veteran as defined in section 6 of P.L.1954, c.84 (C.43:15A-6). No application shall be accepted for the purchase of credit for the service if, at the time of application, the member has a vested right to

retirement benefits in another retirement system based in whole or in part upon that service. The member may purchase credit for the service by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary as being applicable to the member's age at the time of the purchase, to the member's salary at that time, or to the highest annual compensation for service in this State for which contributions were made during any prior fiscal year of membership, whichever is greater. The purchase may be made in regular installments, equal to at least 1/2 of the full normal contribution to the retirement system, over a maximum period of 10 years. The employer of a member who applies, pursuant to this section, to purchase credit for public employment with the United States Government or for military service in the Armed Forces of the United States shall not be liable for any payment to the retirement system on behalf of the member for the purchase of this credit.

Notwithstanding any provision of this act to the contrary, a member shall not be liable for any costs associated with the financing of pension adjustment benefits and health care benefits for retirees when purchasing credit for public employment in other states or with the United States Government or military service in the Armed Forces of the United States or with a bi-state or multi-state agency.

Any member electing to make a purchase pursuant to this section who retires prior to completing payments as agreed with the retirement system will receive pro rata credit for the purchase prior to the date of retirement, but if the member so elects at the time of retirement, the member may make the additional lump sum payment required at that time to provide full credit.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 264

AN ACT concerning school district bonds and amending various parts of the statutory law.

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

1. N.J.S.18A:24-16 is amended to read as follows:

Supplemental debt statements; necessity for and contents.

18A:24-16. No school bonds or refunding bonds shall be authorized unless there shall be prepared and filed in accordance with section 18A:24-17 a supplemental debt statement in the form provided by law, setting forth the

amounts of all bonds and notes of the district issued and outstanding, or authorized but not issued, and determining the net school debt of the district and giving effect to the proposed authorization of school bonds. With respect to refunding bonds, the supplemental debt statement shall reflect either new and unissued debt or the amount of the refunding debt in excess of the debt to be refunded.

2. N.J.S.18A:24-36 is amended to read as follows:

Public sale of bonds.

18A:24-36. a. All bonds authorized and issued by type II school districts in accordance with chapter 24 of Title 18A of the New Jersey Statutes, except bonds of authorized issues of \$1,000,000 or less, shall be sold at public sale upon the submission of sealed bids or through the submission of electronic proposals provided that a summary of the notice of public sale of these bonds as described in subsection b. of N.J.S.18A:24-37 shall be advertised at least once at least seven days prior thereto in a nationally recognized local government bond marketing publication or electronic information service carrying municipal bond notices and devoted primarily to financial news or the subject of state and municipal bonds and a notice of public sale containing the provisions described in subsection a. of N.J.S.18A:24-37 shall be advertised at least once at least seven days prior thereto in a newspaper published in the county and having a substantial circulation in the school district. Bonds of authorized issues of \$1,000,000 or less may be sold at private sale without previous public offering.

b. If the board of education of the district determines to conduct the public sale through the submission of electronic bids or proposals, the electronic bids or proposals shall be submitted in the form of open or closed auctions conducted through a nationally recognized electronic securities bidding service and in accordance with such rules as may be promulgated by the State Board of Education. The State board may adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in consultation with the Local Finance Board in the Department of Community Affairs, regulating the terms and conditions of the submission of electronic bids or proposals.

c. The board of education of the district, by resolution, may allow or otherwise delegate to the school business administrator the authority to postpone a public sale without readvertisement, provided that the notice pursuant to subsection a. of this section contained precise information concerning the postponement and rescheduling procedure. The postponement and rescheduling procedure shall provide that a public sale may be postponed upon not less than 24 hours' notice, and that if the public sale is postponed, it may be recommenced upon not less than 48 hours' notice without further notice of

sale. A public sale may not be postponed for more than 60 days without readvertisement.

d. The board of education of the district, by resolution, may allow the adjustment of, or otherwise delegate to the school business administrator the authority to adjust, the maturity schedule of the bonds, up to 24 hours prior to the time advertised for the receipt of bids and within 24 hours after the award of bids; provided that no maturity schedule adjustment shall exceed 10% of the principal for any maturity with the aggregate adjustment to maturity not to exceed 10% of the principal for the overall issue. When an adjustment has been made to a maturity schedule previously approved by the Local Finance Board in the Department of Community Affairs, a copy of the final maturity schedule which meets or complies with the limitations in this subsection shall be filed with the Local Finance Board within 30 days of the sale and shall be conclusively deemed to have been approved by the Local Finance Board.

3. N.J.S.18A:24-37 is amended to read as follows:

Notice of sale of bonds.

18A:24-37. a. The notice of sale of Type II school district bonds required to be advertised pursuant to N.J.S. 18A:24-36 shall describe the bonds and set forth in substance the postponement provisions and the other terms and conditions of sale, including the type of sale to be conducted, through the submission of either sealed or electronic bids or proposals, the principal amount, date, denomination and maturities, and authorization for adjustments to the maturities pursuant to subsection d. of N.J.S. 18A:24-36 of the bonds offered for sale and such other provisions as may be determined by the Type II school district. As to interest to be borne by the bonds, it shall specify a rate or rates or maximum rate, and the method of calculation of interest cost pursuant to subsection b. of N.J.S. 18A:24-39, which rate or the maximum rate shall in no event exceed 6% per annum. If proposals are invited at more than one interest rate, the notice shall also state that no proposals will be considered for bonds of a rate higher than the lowest rate at which a legally acceptable proposal is received.

b. A summary of the notice of public sale of Type II school district bonds required to be advertised pursuant to N.J.S. 18A:24-36 shall set forth: the principal amount, date, denomination and maturities of the bonds offered for sale; the rate or rates of interest or maximum rate or rates of interest to be borne by the bonds; a reference to where additional terms and conditions of the public sale may be obtained; and the type of sale to be conducted, through the submission of either sealed or electronic bids or proposals.

4. N.J.S.18A:24-39 is amended to read as follows:

Special provisions for two or more issues.

18A:24-39. In case of a sale of more than one issue such notice of sale may, after describing the separate issues, provide in substance for one of the following methods of sale, namely:

a. The notice may state the combined maturities of all of said issues and request bids only for such combined maturities as if such combined maturities constituted a single issue, in which event the provisions of sections 18A:24-36 to 18A:24-46 shall apply as though the combined maturities constituted a single issue; or

b. The notice may state that bidders may name a single rate, or different rates, of interest for the different issues of bonds included in such sale, but if different rates are permitted, the notice may require a single rate for all the bonds of one issue, and that all issues will be awarded to the bidder on whose bid the total loan may be made at the lowest net interest cost or the true interest cost to the school district. The board of education of the district shall specify in its notice of public sale advertised pursuant to N.J.S. 18A:24-37 whether the award shall be based on net interest cost or true interest cost. The net interest cost shall be computed by adding to the total principal amount of the bonds which the bidder offers to accept, the total interest cost to maturity which will be paid under the terms of the bid, after deducting from such interest cost the amount of cash premium, if any bid, which shall not exceed \$1,000.00 as to any one issue or the addition thereto of the amount of discount, if any, bid. The true interest cost shall be computed in each instance by determining the interest rate, compounded semi-annually, necessary to discount the debt service payments to the date of the bonds and to the price bid, excluding interest accrued to the delivery date.

c. The board of education of the district, by resolution, may allow or otherwise delegate to the school business administrator the authority to permit a bidder to aggregate the consecutive principal maturities for which such bidder bid in the same interest rate into term bonds, provided that mandatory sinking funds for which redemptions in lieu of the principal maturities are provided. For the purposes of this subsection, "term bond" means a bond that is due in a certain year but has mandatory retirement provisions for portions of the term bond on specified dates prior to the maturity date of the term bond itself.

5. N.J.S. 18A:24-41 is amended to read as follows:

Deposit by bidders.

18A:24-41. a. The notice of sale shall require all bidders to deposit a certified or cashier's or treasurer's check for 2% of the amount of bonds, drawn upon a bank or trust company for said amount, partially to secure the school district from any loss resulting from the failure of the bidder to comply with the terms of his bid, or as liquidated damages for such failure.

b. The State Board of Education, in consultation with the Local Finance Board in the Department of Community Affairs, may adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to permit school districts to accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as required in subsection a. of this section.

6. N.J.S.18A:24-42 is amended to read as follows:

Sealed bids, proposals opened publicly.

18A:24-42. All sealed bids or proposals shall be opened publicly and all bids or proposals transmitted electronically shall be received at the time and place stated in such notice of sale, and not before, and shall be publicly announced, except upon a postponement and recommencement of the public sale made in accordance with the provisions of subsection c. of N.J.S.18A:24-36, in which case such bids or proposals shall be publicly opened, received and announced, as appropriate, at the postponed and recommenced date.

7. Section 4 of P.L.1969, c.130 (C.18A:24-61.4) is amended to read as follows:

C.18A:24-61.4 Supplemental debt statement, adoption of refunding bond ordinance; provisions.

4. A supplemental debt statement shall be prepared and filed with respect to a Type II school district, in accordance with N.J.S.18A:24-17, that reflects either new and unissued debt or the amount of the refunding debt in excess of the debt to be refunded prior to the adoption of a bond ordinance by the board of education of a Type II school district. Thereafter a refunding bond ordinance may be enacted by the board of education of any Type II school district after the approval thereof by resolution of such board of education, and by subsequent adoption thereof after advertised public hearing, notice of which shall be given by publication of such proposed refunding bond ordinance and notice of hearing once at least 7 days prior to date of such hearing, in a newspaper circulating in the school district. Following the holding of such public hearing, at which all interested persons shall be given an opportunity to be heard, such refunding bond ordinance may thereupon be adopted by the recorded affirmative vote of 2/3 of the full membership of such board of education or at such other time and place to which such hearing or further consideration thereof shall have been adjourned. The refunding bond ordinance in the case of a Type II school district shall contain in substance: (a) an authorization of the issuance of the refunding bonds, stating in brief and general terms sufficient for reasonable identification the refunded bonds to be funded or refunded, and the amount of the cost of issuing the refunding bonds which is included in the authorized principal amount of the refunding bonds; (b)

the principal amount of refunding bonds authorized; and (c) in either the refunding bond ordinance or a resolution adopted prior to the issuance of the refunding bonds such further provisions as the Local Finance Board in the Department of Community Affairs of the State of New Jersey may require or approve as to deposit, securing, regulation, investment, reinvestment, disposition or application of the proceeds of such refunding bonds, and matters in connection therewith, including the officer or officers of the school district to be responsible therefor, and amortization or other provision for premiums or other losses incurred.

Such refunding bond ordinance or resolution may also contain provisions, which shall be a part of the contract with the holders of the refunding bonds, as to the establishment of, and the making of appropriations for, reserves or sinking funds and the amount, source, securing, regulation and disposition thereof. Any matter relating to refunding bonds and not required to be contained in the refunding bond ordinance may be performed or determined by subsequent resolution of the board of education, or the performance or determination thereof delegated by resolution to a financial officer of the school district.

8. Section 5 of P.L.1969, c.130 (C.18A:24-61.5) is amended to read as follows:

C.18A:24-61.5 Certified copy of refunding bond ordinance; filing.

5. a. A certified copy of any refunding bond ordinance shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs before adoption, together with a complete statement in form prescribed by the director and signed by the chief financial officer of the school district as to the outstanding bonds to be funded or refunded by issuance of the refunding bonds. Except as provided in subsection b. of this section no refunding bond ordinance or any resolution performing, determining or authorizing matters or acts in connection with refunding bonds shall take effect until the consent of the local finance board shall have been endorsed upon a certified copy thereof as adopted.

Any certification or endorsement of consent made by the local finance board or by a majority of the members thereof or by the secretary thereof pursuant to its direction as to any issue of refunding bonds shall, after the issuance of such refunding bonds in reliance thereon, be conclusive as to its validity or regularity and shall not be contested in any action or proceeding relating to such refunding bonds instituted after the issuance of such bonds.

The county, municipality or school district may enter into any contracts or agreements to implement the refunding program, including agreements with banking institutions with respect to the application of moneys deposited in a sinking fund for the payment of the refunding bonds at their maturity date to the purchase of obligations of the United States Government or obligations

the principal of and interest on which are guaranteed by the United States Government or obligations of any agency or instrumentality of the United States Government without regard to any limitations as to the investment or deposit of moneys.

b. Refunding bonds to realize total debt service savings on outstanding obligations may be issued without the approval of the Local Finance Board in the Department of Community Affairs when authorized by conditions set forth in rules and regulations of the Local Finance Board and upon a resolution adopted by 2/3 vote of the full membership of the board of education of the district.

9. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 265

AN ACT creating a "Commission to Review Criminal Sentencing" to review the fairness and proportionality of the penalties imposed under this State's criminal laws.

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

1. The Legislature finds and declares that, since the New Jersey Code of Criminal Justice was codified in 1978 as Title 2C of the New Jersey Statutes, many new criminal offenses have been added to the code and penalties for many existing offenses have been enhanced. The Legislature further finds and declares that a comprehensive review of these new and enhanced offenses should be conducted to determine if the sentences for these offenses are fair and proportionate to other sentences imposed under the code.

2. a. There is hereby created a commission to be known as the "Commission to Review Criminal Sentencing" to consist of 15 members as follows: two members of the Senate to be appointed by the President thereof, who shall not be of the same political party; two members of the General Assembly to be appointed by the Speaker thereof, who shall not be of the same political party; the Attorney General, or his designee; the Commissioner of Corrections, or his designee; the Public Defender, or his designee; the Chief Justice, or his designee; the Chairman of the State Parole Board, or his designee; the President of the New Jersey County Prosecutors Association, or a representative; the President of the New Jersey State Bar Association, or a representative; one public member appointed by the Senate President; one

public member appointed by the Speaker of the General Assembly; and two public members appointed by the Governor, no more than one of whom shall be of the same political party. The public members shall serve during the existence of the commission. In selecting the public members, the Senate President, the Speaker of the General Assembly and the Governor should seek to include persons who have experience, training, or academic background in victims' rights advocacy, alcohol and drug addiction counseling, corrections, judicial administration or criminal law. The members appointed from a class of holders of public office shall remain members until the expiration of the commission or until they cease to be members of the class from which they were appointed, whichever occurs first. Any vacancy in the membership of the commission shall be filled by appointment in the same manner as the original appointment was made.

b. The commission shall organize as soon as possible after the appointment of its members. The members shall elect one of the members to serve as chair and vice-chair and the chair may appoint a secretary, who need not be a member of the commission.

c. The members of the commission shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the commission for its purposes.

d. The commission shall be entitled to accept the assistance and services of such employees of any State, county, or municipal department, board, bureau, commission, or agency as may be made available to it and to employ such legal, stenographic, technical, and clerical assistance and incur such expenses as may be necessary in order to perform its duties within the limits of funds appropriated or otherwise made available to it for its purposes.

3. It shall be the duty of the commission to review the statutory law pertaining to sentences imposed for criminal offenses and make recommendations for legislation to be enacted by the Legislature that would ensure that these sentences are fair and proportionate to other sentences imposed for criminal offenses.

4. The commission shall prepare and submit to the Governor and the Legislature on January 1 of each year an interim report, including the expected date of a final report, of its findings and recommendations.

5. This act shall take effect immediately and shall expire upon the submission by the commission of its final report to the Governor and the Legislature.

Approved January 14, 2004.

CHAPTER 266

AN ACT concerning implementation of the California Low Emission Vehicle program, supplementing P.L.1954, c.212 (C.26:2C-1 et seq.), amending and repealing various sections of P.L.1993, c.69, and supplementing P.L.1966, c.30 (C.54:32B-1 et seq).

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

C.26:2C-8.15 Findings, declarations relative to California Low Emission Vehicle program.

1. The Legislature finds and declares that the implementation of the National Low Emission Vehicle program is a key component of the State's efforts to achieve on-time emissions reductions and to attain compliance with the national ambient air quality standards, as required pursuant to the federal "Clean Air Act Amendments of 1990," 42 U.S.C. s.7403 et seq.; that the State's attainment of the national ambient air quality standards will require further, more stringent reductions in emissions of pollutants; that the California Low Emission Vehicle program provides for greater reductions in pollutants than the National Low Emission Vehicle program; and that the State has committed to implementing the National Low Emission Vehicle program until 2006 but can implement the California Low Emission Vehicle program after that year.

The Legislature further finds and declares that in the summer of 2002, New Jersey had the highest number of smog violations per monitoring station in the nation; that in December 2003, the United States Environmental Protection Agency announced its intention to designate the entire State as out-of-compliance with the agency's health-based standard for ozone; and that this designation by the United States Environmental Protection Agency would require the State to adopt a stronger, more comprehensive clean air plan for the State.

The Legislature further finds and declares that a significant percentage of particulate emissions, smog-forming emissions, and airborne cancer risk comes from vehicle emissions; that pollution from automobiles is expected to increase with the projected population increase estimate of an additional 1,200,000 people in the State in the next decade; and that mobile sources of emissions have received less regulatory attention than industrial facilities and area sources of pollution.

The Legislature further finds and declares that ground-level ozone, or smog, is formed when automobile, industrial and other pollutants chemically react with bright sunshine and high temperatures; that ground-level ozone irritates the respiratory system and can cause coughing, wheezing, chest pain and headaches; that ozone especially aggravates chronic respiratory diseases such as asthma and bronchitis; that ground-level ozone and other air toxics

have a substantial negative impact on the health and quality of life of residents of the State; and that reducing ground-level ozone pollution will help reduce these negative health effects.

The Legislature therefore determines that it is in the public interest to: implement the California Low Emission Vehicle program beginning January 1, 2009; establish a zero emission vehicle credit bank for manufacturers; establish a Low Emission Vehicle Review Commission charged with reviewing the implementation of the program, the availability and success of the incentive, and the technology of zero emission vehicles; and provide an incentive for the purchase or lease of zero emission vehicles.

C.26:2C-8.16 Definitions relative to low emission vehicles.

2. As used in sections 1 through 7 of P.L.2003, c.266 (C.2C:2C-8.15 et seq.):

"Advanced technology partial zero emission vehicle" means a vehicle certified as an advanced technology partial zero emission vehicle pursuant to the California Air Resources Board vehicle standards for the applicable model year;

"California Low Emission Vehicle program" means the second phase of the low emission vehicle program being implemented in the State of California, pursuant to the provisions of the Federal Clean Air Act and the California Code of Regulations;

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

"Federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act;

"Low Emission Vehicle Review Commission" means the commission established by subsection a. of section 5 of P.L.2003, c.266 (C.26:2C-8.19);

"Partial zero emission vehicle" means a vehicle certified as a partial zero emission vehicle pursuant to the California Air Resources Board vehicle standards for the applicable model year;

"State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act;

"Zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, but shall not include an advanced technology partial zero emission vehicle or a partial zero emission vehicle; and

"Zero emission vehicle requirement" means the percentage or number of those vehicles certified as zero emission vehicles pursuant to the California Air Resources Board vehicle standards and required to be delivered by a manufacturer for sale or lease for the applicable model year, and any additional

percentages or numbers of advanced technology partial zero emission vehicles or partial zero emission vehicles that may be delivered by a manufacturer for sale or lease to satisfy the zero emission vehicle requirement established by the California Air Resources Board in lieu of vehicles that meet the pure zero emission vehicle standard.

C.26:2C-8.17 Implementation of California Low Emission Vehicle program; substantive changes.

3. a. Notwithstanding any provision of a State implementation plan submitted by the Department of Environmental Protection to the United States Environmental Protection Agency pursuant to the requirements of the federal "Clean Air Act Amendments of 1990," 42 U.S.C. s.7403 et seq., to the contrary, the department shall implement the California Low Emission Vehicle program in the State beginning on January 1, 2009, except as provided pursuant to sections 6 and 7 of P.L.2003, c.266 (C.26:2C-8.20 and C.26:2C-8.21).

b. The Commissioner of Environmental Protection, within 30 days after a proposed major substantive change to the California Low Emission Vehicle program that, if adopted, would necessitate a corresponding substantive change to the program in New Jersey adopted pursuant to subsection a. of this section, shall provide written notice and a summary of the proposed substantive change to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly.

c. The commissioner shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement the California Low Emission Vehicle program in the State beginning on January 1, 2009.

C.26:2C-8.18 Zero emission vehicle credit bank.

4. a. The Commissioner of Environmental Protection shall establish a zero emission vehicle credit bank to allow manufacturers to earn and bank vehicle equivalent credits for any advanced technology partial zero emission vehicle or partial zero emission vehicle produced and delivered for sale or lease in the State on or after January 1, 1999 and through December 31, 2008.

(1) In establishing the credit bank required by this section, the commissioner shall use the highest multiplier used by the California Air Resources Board for determining the allowable vehicle equivalent credits for each advanced technology partial zero emission vehicle or partial zero emission vehicle delivered for sale or lease in the State by a manufacturer on or after January 1, 1999 until the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.).

(2) Beginning on the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.), the commissioner shall use the multiplier used by the California Air Resources Board for the applicable model year for each advanced technology partial zero emission vehicle or partial zero emission vehicle delivered for

sale or lease in the State by a manufacturer on or after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.) and through December 31, 2008.

b. (1) Within 180 days after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.), the commissioner shall publish a list in the New Jersey Register of the make and model of those motor vehicles that qualify as advanced technology partial zero emission vehicles or partial zero emission vehicles for the 1999 through 2003 model years.

(2) Annually thereafter, the commissioner shall publish a list in the New Jersey Register of the make and model of those motor vehicles that qualify as advanced technology partial zero emission vehicles or partial zero emission vehicles for that respective model year.

(3) The commissioner may revise any list published pursuant to this subsection as necessary to comply with the California Air Resources Board vehicle standards for the applicable model year.

c. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to establish a zero emission vehicle credit bank pursuant to subsection a. of this section. These rules and regulations may include, but need not be limited to, the documentation to be submitted by a manufacturer to determine eligibility and participation in the credit bank established pursuant to subsection a. of this section, and fees for administrative services provided to implement the zero emission vehicle credit bank to be assessed to those manufacturers seeking to earn and bank credits. The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing, except that in no case shall the temporary rules and regulations be in effect one year after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.). The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

d. The provisions of this section shall expire upon the passage of a concurrent resolution by the Legislature directing the department to implement the National Low Emission Vehicle program pursuant to subsection a. of section 6 of P.L.2003, c.266 (C.26:2C-8.20).

C.26:2C-8.19 Low Emission Vehicle Review Commission.

5. a. There is established the Low Emission Vehicle Review Commission consisting of 15 members as follows: the Director of the Environmental and Occupational Health Sciences Institute at Rutgers, the State University of New Jersey, or the director's designee; a representative of the Department of Environmental Protection appointed by the commissioner; one member

of the General Assembly appointed by the Speaker of the General Assembly; one member of the Senate appointed by the President of the Senate; and 11 public members.

The 11 public members, to be appointed by the Governor with the advice and consent of the Senate, shall be as follows: two members representing manufacturers of automobiles sold within the State; two members representing automotive retailers and recommended to the Governor by the New Jersey Coalition of Automotive Retailers; two members of recognized Statewide environmental organizations; one member representing the New Jersey Public Interest Research Group; one member representing the New Jersey Institute of Technology and recommended to the Governor by the President of the New Jersey Institute of Technology; one member representing the American Lung Association of New Jersey; one member representing the Northeast States for Coordinated Air Use Management; and one member representing a zero emission vehicle technology company.

b. Any vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

c. The Director of the Environmental and Occupational Health Sciences Institute at Rutgers, the State University of New Jersey, or the director's designee, shall serve as chairperson of the commission. The commission shall meet at the call of the chairperson, and the commission shall organize as soon as practicable after appointment of its members.

d. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties.

e. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

f. (1) The commission shall study advances made in zero emission vehicle and advanced technology partial zero emission vehicle technologies. The commission shall also study the development of hydrogen fuel cell technology, the infrastructure required for its use in motor vehicles, the development of that infrastructure, and the availability of hydrogen fuel cell vehicles to the public. In studying these issues, the commission shall review any advice prepared by the independent expert review panel established to advise the California Air Resources Board concerning advances made in zero emission vehicle and advanced technology partial zero emission vehicle technologies.

(2) The commission shall evaluate any proposed or adopted changes made by the California Air Resources Board to the California Low Emission Vehicle program and the potential effects of these changes on the implementation of the program in this State. If the California Air Resources Board has not acted prior to the start of the 2008 model year to revise the requirements under the alternative compliance path for the amount of fuel cell vehicles required by a manufacturer beginning for the 2012 model year from a state-specific requirement to a nationwide requirement, the commission shall make a recommendation as to whether the State should implement the California Low Emission Vehicle program beginning on January 1, 2009 or if the State should instead continue with implementation of the National Low Emission Vehicle program.

(3) The commission shall determine whether the incentive provided by the State pursuant to section 11 of P.L.2003, c.266 (C.54:32B-8.55) is sufficient to encourage the purchase of zero emission vehicles. The commission shall make recommendations to the Governor and the Legislature setting forth any additional incentives determined to be necessary to encourage the purchase of zero emission vehicles or advanced technology partial zero emission vehicles in order to increase the effectiveness of the implementation of the California Low Emission Vehicle program in the State.

(4) The commission shall evaluate the feasibility of the zero emission vehicle requirement of the California Low Emission Vehicle program and make a determination whether the zero emission vehicle requirement is achievable in this State beginning on January 1, 2009. This evaluation shall include an examination of zero emission vehicle technology, price, performance, consumer acceptability, and implementation issues relating to the use of zero emission vehicles in the State.

g. Within one year after organizing, the commission shall submit a report to the Governor, the Commissioner of Environmental Protection, and the Legislature: (1) summarizing the activities and findings of the commission to date; (2) setting forth any recommendations for additional incentives determined to be necessary to encourage the purchase of zero emission vehicles or advanced technology partial zero emission vehicles; and (3) setting forth any recommendations that would increase the effectiveness of the implementation of the California Low Emission Vehicle program in the State.

h. No later than January 1, 2008, the commission shall submit a final report to the Governor, the Commissioner of Environmental Protection, and the Legislature:

(1) summarizing the studies and evaluations conducted pursuant to subsection f. of this section;

(2) setting forth any recommendations for additional incentives to encourage the purchase of zero emission vehicles or advanced technology partial zero emission vehicles; and

(3) setting forth a recommendation as to whether:

(a) pursuant to paragraph (2) of subsection f. of this section, the California Low Emission Vehicle program should be implemented in the State beginning on January 1, 2009 or if the State should instead continue with implementation of the National Low Emission Vehicle program; and

(b) if the commission recommends that the California Low Emission Vehicle program should be implemented in the State, the commission shall further set forth a recommendation as to whether the zero emission vehicle requirements of the program should be implemented in the State based on the evaluation conducted pursuant to paragraph (4) of subsection f. of this section.

C.26:2C-8.20 Recommendations of commission.

6. a. If the low emission vehicle review commission, in the report required pursuant to subsection h. of section 5 of P.L.2003, c.266 (C.26:2C-8.19), recommends, pursuant to subparagraph (a) of paragraph (3) of subsection h. of section 5 of P.L.2003, c.266 (C.26:2C-8.19), that the State should not implement the California Low Emission Vehicle program and instead continue with implementation of the National Low Emission Vehicle program, the department shall implement the California Low Emission Vehicle program unless the Legislature by passage of a concurrent resolution directs the department to implement the National Low Emission Vehicle program.

b. Upon the passage of a concurrent resolution by the Legislature directing the department to implement the National Low Emission Vehicle program, the commissioner, notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to continue implementation of the National Low Emission Vehicle program.

The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing. The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

C.26:2C-8.21 Acceptance, rejection of commission's recommendation.

7. a. If the low emission vehicle review commission recommends in the report required pursuant to subsection h. of section 5 of P.L.2003, c.266 (C.26:2C-8.19) that the State should implement the California Low Emission Vehicle program without the zero emission vehicle requirement, the

commissioner may make a determination to accept or reject the recommendation of the commission concerning the implementation of the zero emission vehicle requirement.

b. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Environmental Protection shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to implement the provisions of subsection a. of this section.

The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing. The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

c. The commissioner shall, in writing, notify the Governor and the Legislature of: (1) the determination made pursuant to subsection a. of this section; and (2) the filing of the temporary rules and regulations with the Office of Administrative Law pursuant to subsection b. of this section.

8. Section 5 of P.L.1993, c.69 (C.26:2C-8.10) is amended to read as follows:

C.26:2C-8.10 Sale, use of reformulated gasoline; program expiration.

5. The department shall not adopt rules and regulations requiring, for gasoline-fueled motor vehicles, the sale and use of reformulated gasoline other than that certified therefor by the United States Environmental Protection Agency pursuant to subsection (k) of 42 U.S.C. s.7545 for sale and use in states other than the State of California. If the sale and use of reformulated gasoline other than that so certified is required by federal law, rule, regulation, agency ruling, order, opinion, or other action or court order to be sold for use, and used, in gasoline-fueled motor vehicles in New Jersey because the State has implemented the California Low Emission Vehicle program pursuant to subsection a. of section 3 of P.L.2003, c.266 (C.26:2C-8.17), the California Low Emission Vehicle program implemented in New Jersey pursuant to P.L.2003, c.266 (C.26:2C-8.15 et al.) shall expire 180 days from the date of enactment of the federal law, adoption of the federal rule or regulation, issuance of the agency ruling, order, opinion, or other action, or issuance of the court order, as the case may be.

9. Section 6 of P.L.1993, c.69 (C.26:2C-8.11) is amended to read as follows:

C.26:2C-8.11 Air pollution control rules, regulations.

6. a. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations implementing the following mandated air pollution control measures identified in the federal Clean Air Act and consistent with any rules, regulations, or guidelines that may be promulgated therefor by the United States Environmental Protection Agency:

- (1) Enhanced vehicle inspection and maintenance program;
- (2) Correction of reasonably available control technology rules for volatile organic compounds;
- (3) Reasonably available control technology rules for volatile organic compounds;
- (4) Reasonably available control technology rules for oxides of nitrogen;
- (5) New source review regulations for volatile organic compounds, oxides of nitrogen, and carbon monoxide;
- (6) Criteria and procedures for determining conformity between the State implementation plan and transportation plans; and
- (7) Use in ozone nonattainment areas of federal reformulated gasoline that meets the requirements of subsection (k) of 42 U.S.C. s.7545 for sale and use in states other than the State of California.

b. As used in this section:

"Department" means the Department of Environmental Protection;

"Federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act; and

"State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act.

10. Section 10 of P.L.1993, c.69 (C.26:2C-8.14) is amended to read as follows:

C.26:2C-8.14 Written report, list, inventory.

10. a. The Department of Environmental Protection, in consultation with the Commissioner of Transportation and the Chief Administrator of the New Jersey Motor Vehicle Commission, shall prepare and submit on a semi-annual basis to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly, a written report that shall:

(1) summarize the State implementation plan and any amendments, alterations, or supplements to that plan that have been made or proposed since the last semi-annual report was issued; and

(2) analyze the progress and effectiveness of the State implementation plan with respect to ensuring that the State shall be, and shall remain, in compliance with all applicable requirements, standards, and deadlines set forth in the federal Clean Air Act.

As used in this subsection: "federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act; and "State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act.

b. (Deleted by amendment, P.L.2003, c.266).

c. (Deleted by amendment, P.L.2003, c.266).

C.54:32B-8.55 Exemption from sales tax for zero emission vehicles.

11. a. Receipts from sales of zero emission vehicles sold on or after the first day of the fourth month following the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.) are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. The Commissioner of Environmental Protection shall certify to the State Treasurer the make and model of those motor vehicles that are zero emission vehicles and eligible for the exemption provided pursuant to subsection a. of this section.

c. As used in this section, "zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, but shall not include any other type of vehicle that may be delivered by a manufacturer for sale or lease to satisfy the zero emission vehicle requirement established by the California Air Resources Board in lieu of a vehicle that qualifies as a pure zero emission vehicle.

Repealer.

12. The following are repealed:

Sections 1 through 4 inclusive of P.L.1993, c.69 (C.26:2C-8.6 through 26:2C-8.9); and

Sections 7 and 8 of P.L.1993, c.69 (C.26:2C-8.12 and 26:2C-8.13).

13 This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 267

AN ACT concerning the special sentence of community supervision for life and amending P.L.1994, c.130, P.L.1997, c.117, P.L.1979, C.441, N.J.S.2C:43-2 and N.J.S.2C:43-7.

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

1. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to read as follows:

C.2C:43-6.4 Special sentence of parole supervision for life.

2. a. Notwithstanding any provision of law to the contrary, a judge imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4, endangering the welfare of a child pursuant to paragraph (3) of subsection b. of N.J.S.2C:24-4, luring or an attempt to commit any of these offenses shall include, in addition to any sentence authorized by this Code, a special sentence of parole supervision for life.

b. The special sentence of parole supervision for life required by this section shall commence immediately upon the defendant's release from incarceration. If the defendant is serving a sentence of incarceration for another offense at the time he completes the custodial portion of the sentence imposed on the present offense, the special sentence of parole supervision for life shall not commence until the defendant is actually released from incarceration for the other offense. Persons serving a special sentence of parole supervision for life shall remain in the legal custody of the Commissioner of Corrections, shall be supervised by the Division of Parole of the State Parole Board, shall be subject to the provisions and conditions set forth in subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65), and shall be subject to conditions appropriate to protect the public and foster rehabilitation. If the defendant violates a condition of a special sentence of parole supervision for life, the defendant shall be subject to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and for the purpose of calculating the limitation on time served pursuant to section 21 of P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon the defendant related to the special sentence

of parole supervision for life shall be deemed to be a term of life imprisonment. When the court suspends the imposition of sentence on a defendant who has been convicted of any offense enumerated in subsection a. of this section, the court may not suspend imposition of the special sentence of parole supervision for life, which shall commence immediately, with the Division of Parole of the State Parole Board maintaining supervision over that defendant, including the defendant's compliance with any conditions imposed by the court pursuant to N.J.S.2C:45-1, in accordance with the provisions of this subsection. Nothing contained in this subsection shall prevent the court from at any time proceeding under the provisions of N.J.S.2C:45-1 through 2C:45-4 against any such defendant for a violation of any conditions imposed by the court when it suspended imposition of sentence, or prevent the Division of Parole from proceeding under the provisions of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) against any such defendant for a violation of any conditions of the special sentence of parole supervision for life, including the conditions imposed by the court pursuant to N.J.S.2C:45-1. In any such proceeding by the Division of Parole, the provisions of subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b) authorizing revocation and return to prison shall be applicable to such a defendant, notwithstanding that the defendant may not have been sentenced to or served any portion of a custodial term for conviction of an offense enumerated in subsection a. of this section.

c. A person sentenced to a term of parole supervision for life may petition the Superior Court for release from that parole supervision. The judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others if released from parole supervision. Notwithstanding the provisions of section 22 of P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of parole supervision for life may be released from that parole supervision term only by court order as provided in this subsection.

d. A person who violates a condition of a special sentence imposed pursuant to this section without good cause is guilty of a crime of the fourth degree. Notwithstanding any other law to the contrary, a person sentenced pursuant to this subsection shall be sentenced to a term of imprisonment, unless the court is clearly convinced that the interests of justice so far outweigh the need to deter this conduct and the interest in public safety that a sentence to imprisonment would be a manifest injustice. Nothing in this subsection shall preclude subjecting a person who violates any condition of a special sentence of parole supervision for life to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65)

pursuant to the provisions of subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

e. A person who, while serving a special sentence of parole supervision for life imposed pursuant to this section, commits a violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5, subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, N.J.S.2C:13-6, N.J.S.2C:14-2, N.J.S.2C:14-3, N.J.S.2C:24-4, N.J.S.2C:18-2 when the offense is a crime of the second degree, or subsection a. of N.J.S.2C:39-4 shall be sentenced to an extended term of imprisonment as set forth in N.J.S.2C:43-7, which term shall, notwithstanding the provisions of N.J.S.2C:43-7 or any other law, be served in its entirety prior to the person's resumption of the term of parole supervision for life.

2. Section 3 of P.L.1997, c.117 (C.30:4-123.51b) is amended to read as follows:

C.30:4-123.51b Released status under term of parole supervision; rules, regulations; conditions applicable to parole supervision for life.

3. a. A person who has been sentenced to a term of parole supervision and is on release status in the community pursuant to section 2 of P.L.1997, c.117 (C.2C:43-7.2) shall, during the term of parole supervision, remain on release status in the community, in the legal custody of the Commissioner of the Department of Corrections, and shall be supervised by the Division of Parole of the State Parole Board as if on parole, and shall be subject to the provisions and conditions set by the appropriate board panel. The appropriate board panel shall have the authority, in accordance with the procedures and standards set forth in sections 15 through 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.65), to revoke the person's release status and return the person to custody for the remainder of the term or until it is determined, in accordance with regulations adopted by the board, that the person is again eligible for release consideration pursuant to section 9 of P.L.1979, c.441 (C.30:4-123.53).

b. The Parole Board shall promulgate rules and regulations necessary to carry out the purposes of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. A person who has been sentenced to a term of parole supervision for life pursuant to section 2 of P.L.1994, c.130 (C.2C:43-6.4) shall, during the term of parole supervision, remain in the legal custody of the Commissioner of Corrections, be supervised by the Division of Parole of the State Parole Board, and be subject to the provisions and conditions set by the appropriate board panel in accordance with the procedures and standards set forth in sections 15 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65). If the parolee violates a condition of a special sentence of parole supervision for life, the parolee shall be subject to the provisions

of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and may be returned to prison. If revocation and return to custody are desirable pursuant to the provisions of section 19 of P.L.1979, c.441 (C.30:4-123.63), the appropriate board panel shall revoke parole and return the parolee to prison for a specified length of time between 12 and 18 months, which shall not be reduced by commutation time for good behavior pursuant to R.S.30:4-140 or credits for diligent application of work and other institutional assignments pursuant to R.S.30:4-92; provided, however, that nothing contained in this subsection shall be construed or applied to reduce the time that must be served after revocation of parole by a parolee returned to prison for a violation of a condition of any other term of parole supervision. Upon the parolee's release from prison, the parolee shall continue to serve the special sentence of parole supervision for life until released by the Superior Court pursuant to subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4). For the purpose of calculating the limitation on time served pursuant to section 21 of P.L.1979, c.441 (C.30:4-123.65), the custodial term imposed upon the parolee related to the special sentence of parole supervision for life shall be deemed to be a term of life imprisonment. For the purpose of establishing a primary parole eligibility date pursuant to subsection h. of section 7 of P.L.1979, c.441 (C.30:4-123.51), the specific period of incarceration required to be served pursuant to this subsection shall not be aggregated with a term of imprisonment imposed on the parolee for the commission of any other offense. Nothing in this section shall be construed to preclude or limit the prosecution or conviction for any crime defined in any law of this State, or to limit in any manner the State's ability to pursue both a criminal action and a parole violation pursuant to the provisions of this section or any other law.

3. Section 22 of P.L.1979, c.441 (C.30:4-123.66) is amended to read as follows:

C.30:4-123.66 Discharge from parole prior to maximum term.

22. Except as otherwise provided in subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4), the appropriate board panel may give any parolee a complete discharge from parole prior to the expiration of the full maximum term for which he was sentenced or as authorized by the disposition, provided that such parolee has made a satisfactory adjustment while on parole, provided that continued supervision is not required, and provided the parolee has made full payment of any fine or restitution.

4. N.J.S.2C:43-7 is amended to read as follows:

Sentence of imprisonment for crime; extended terms.

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced, and in the cases designated in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997, c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall be sentenced, to an extended term of imprisonment, as follows:

(1) In case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1; or aggravated sexual assault if the person is eligible for an extended term pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in the case of a crime of the fourth degree pursuant to any other provision of law for a term which shall be fixed by the court between three and five years;

(6) In the case of the crime of murder, for a specific term of years which shall be fixed by the court between 35 years and life imprisonment, of which the defendant shall serve 35 years before being eligible for parole;

(7) In the case of kidnapping under paragraph (2) of subsection c. of 2C:13-1, for a specific term of years which shall be fixed by the court between 30 years and life imprisonment, of which the defendant shall serve 30 years before being eligible for parole.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall impose a sentence within the ranges permitted by 2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which

sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f, be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

d. In the case of a person sentenced to an extended term pursuant to N.J.S.2C:43-6g, the court shall impose a sentence within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall be fixed at 15 years for a crime of the first or second degree, eight years for a crime of the third degree, or five years for a crime of the fourth degree during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted of a violation of N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

5. N.J.S.2C:43-2 is amended to read as follows:

Sentence in accordance with code; authorized dispositions.

Sentence in accordance with code; authorized dispositions. a. Except as otherwise provided by this code, all persons convicted of an offense or offenses shall be sentenced in accordance with this chapter.

b. Except as provided in subsection a. of this section and subject to the applicable provisions of the code, the court may suspend the imposition of sentence on a person who has been convicted of an offense, or may sentence him as follows:

(1) To pay a fine or make restitution authorized by N.J.S.2C:43-3 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or

(2) Except as provided in subsection g. of this section, to be placed on probation and, in the case of a person convicted of a crime, to imprisonment for a term fixed by the court not exceeding 364 days to be served as a condition of probation, or in the case of a person convicted of a disorderly persons offense, to imprisonment for a term fixed by the court not exceeding 90 days to be served as a condition of probation; or

(3) To imprisonment for a term authorized by sections 2C:11-3, 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

(4) To pay a fine, make restitution and probation, or fine, restitution and imprisonment; or

(5) To release under supervision in the community or to require the performance of community-related service; or

(6) To a halfway house or other residential facility in the community, including agencies which are not operated by the Department of Human Services; or

(7) To imprisonment at night or on weekends with liberty to work or to participate in training or educational programs.

c. Instead of or in addition to any disposition made according to this section, the court may postpone, suspend, or revoke for a period not to exceed two years the driver's license, registration certificate, or both of any person convicted of a crime, disorderly persons offense, or petty disorderly persons offense in the course of which a motor vehicle was used. In imposing this disposition and in deciding the duration of the postponement, suspension, or revocation, the court shall consider the severity of the crime or offense and the potential effect of the loss of driving privileges on the person's ability to be rehabilitated. Any postponement, suspension, or revocation shall be imposed consecutively with any custodial sentence.

d. This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

e. The court shall state on the record the reasons for imposing the sentence, including its findings pursuant to the criteria for withholding or imposing imprisonment or fines under sections 2C:44-1 to 2C:44-3, where imprisonment is imposed, consideration of the defendant's eligibility for release under the law governing parole and the factual basis supporting its findings of particular aggravating or mitigating factors affecting sentence.

f. The court shall explain the parole laws as they apply to the sentence and shall state:

(1) the approximate period of time in years and months the defendant will serve in custody before parole eligibility;

(2) the jail credits or the amount of time the defendant has already served;

(3) that the defendant may be entitled to good time and work credits; and

(4) that the defendant may be eligible for participation in the Intensive Supervision Program.

g. Notwithstanding the provisions of paragraph (2) of subsection b. of this section, a court imposing sentence on a defendant who has been convicted of any offense enumerated in subsection a. of section 2 of P.L. 1994, c. 130 (C.2C:43-6.4) may not sentence the defendant to be placed on probation.

6. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 268

AN ACT concerning long-term care facilities and supplementing Title 26 of the Revised Statutes.

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

C.26:2M-7.1 Long-term care facilities, list of services for Alzheimer's patients.

1. A long-term care facility that provides specialized care of patients with Alzheimer's disease and related disorders, as defined in section 2 of P.L.1988, c.114 (C.26:2M-10), shall:

a. compile and maintain daily records for each shift in the facility and provide to a member of the public, upon request, information that indicates for each shift, as appropriate:

(1) the number of nurses, including the aggregate total of registered professional nurses and licensed practical nurses, providing direct care to patients diagnosed with Alzheimer's disease and related disorders; and

(2) the number of certified nurse aides providing direct care to patients diagnosed with Alzheimer's disease and related disorders; and

b. provide a member of the public seeking placement of a person diagnosed with Alzheimer's disease or related disorders in the facility with a clear and concise written list that indicates:

(1) the activities that are specifically directed toward patients diagnosed with Alzheimer's disease and related disorders, including, but not limited to, those designed to maintain dignity and personal identity, enhance socialization and success, and accommodate the cognitive and functional ability of a patient;

(2) the frequency of the activities listed in paragraph (1) of this subsection; and

(3) the safety policies and procedures and any security monitoring system that is specific to patients diagnosed with Alzheimer's disease and related disorders.

2. This act shall take effect on the 60th day after enactment.

Approved January 14, 2004.

CHAPTER 269

AN ACT concerning training in long-term care facilities and supplementing Title 26 of the Revised Statutes.

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

C.26:2M-7.2 Training for long-term facility staff relative to Alzheimer's disease.

1. a. The Commissioner of Health and Senior Services shall establish a mandatory training program for long-term care facility staff, as described in subsection b. of this section, in the specialized care of patients who are diagnosed by a physician as having Alzheimer's disease or a related disorder. The training program shall include the causes and progression of Alzheimer's disease and related disorders and methods to deal with the specific problems encountered in the care of patients with Alzheimer's disease and related disorders, including, but not limited to: communicating with patients with Alzheimer's disease and related disorders; psychological, social and physical needs of patients with Alzheimer's disease and related disorders; and safety measures which need to be taken for a patient with Alzheimer's disease and related disorders.

b. A long-term care facility shall annually provide training, under the training program established pursuant to subsection a. of this section, to a certified nurse aide, licensed practical nurse, registered professional nurse and other health care professionals, as appropriate, who provide direct care to a patient in the facility who is diagnosed as having Alzheimer's disease or a related disorder.

2. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act.

3. This act shall take effect on the 120th day after enactment.

Approved January 14, 2004.

CHAPTER 270

AN ACT appropriating moneys from the "Garden State Green Acres Preservation Trust Fund" to provide grants to assist qualifying tax exempt

nonprofit organizations to acquire or develop lands for recreation and conservation purposes.

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

1. a. (1) There is appropriated from the "Garden State Green Acres Preservation Trust Fund," established pursuant to section 19 of P.L.1999, c.152 (C.13:8C-19), to the Department of Environmental Protection the sum of \$11,987,500 for the purpose of providing grants to assist qualifying tax exempt nonprofit organizations to acquire lands for recreation and conservation purposes. The following projects are eligible for funding with the moneys appropriated pursuant to this paragraph:

Nonprofit Organization	Project	County	Municipality	Approved Amount	
(a) American Littoral Society	Hudson-Raritan Estuary Project	Essex	Belleville Twp	\$400,000	
			Bloomfield Twp		
			East Orange City		
			Montclair Twp		
			Newark City		
			Nutley Twp		
		Hudson	South Orange Village Twp		
			Bayonne City		
			East Newark Boro		
			Guttenberg Town		
			Harrison Town		
			Hoboken City		
			Jersey City		
			Kearny Town		
			North Bergen Twp		
			Secaucus Town		
			Union City		
			Weehawken Twp		
			West New York Town		
			Middlesex		Carteret Boro
					Edison Twp
		Highland Park Boro			
		Metuchen Boro			
		Old Bridge Twp			
		Perth Amboy City			
		Sayreville Boro			
		South Amboy City			
		South River Boro			
		Monmouth	Woodbridge Twp		
			Aberdeen Twp		
			Atlantic Highlands Boro		
			Fair Haven Boro		

			Hazlet Twp Highlands Boro Keansburg Boro Keyport Boro Matawan Boro Middletown Twp Union Beach Boro	
		Union	Elizabeth City Linden City Rahway City Union Twp	
(b) Boys & Girls Club of Morris	Boys & Girls Club Addition	Morris	Pequanock Twp	120,000
(c) Canal Society of New Jersey	Morris Canal Greenway	Morris	Mt. Olive Twp Roxbury Twp	400,000
(d) Conservation Fund	Conservation Fund Acq	Sussex Salem	Stanhope Boro Pennsville Twp	400,000
(e) Delaware and Raritan Greenway, Inc.				800,000
	Central Stony Brook Greenway	Hunterdon	Delaware Twp East Amwell Twp	
		Mercer	Hopewell Twp Lawrence Twp Pennington Boro Princeton Twp Cranbury Twp Bordentown Twp Hamilton Twp Hopewell Twp Lawrence Twp West Windsor Twp	
	Delaware River Tributaries Acq	Middlesex Burlington Mercer	Highland Park Boro	
	Griggstown Canal Acq	Middlesex		
		Somerset	Franklin Twp Rocky Hill Boro	
	Sourlands Mountain Acq	Hunterdon	East Amwell Twp Lambertville City West Amwell Twp	
		Mercer Somerset	Hopewell Twp Hillsborough Twp Montgomery Twp	
	Upper Millstone Greenway	Middlesex	Cranbury Twp Highland Park Boro Monroe Twp Plainsboro Twp South Brunswick Twp	
(f) East Windsor Green Space, Inc	Millstone River-Rocky Brook Acq	Mercer	East Windsor Twp	400,000
(g) Friends of Holmdel Open	Bachstadt Property	Monmouth	Holmdel Twp	100,000

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Space					
(h) Friends of Hopewell Valley Open Space	Hopewell Valley Park Acq	Mercer	Hopewell Twp	400,000	
(i) Friends of the Navesink Highlands	Campo Sandy Fields Project	Monmouth	Middletown Twp	400,000	
(j) Friends of Princeton Open Space	Millstone River Watershed	Mercer	Princeton Twp	400,000	
(k) Harding Land Trust	Open Spaces & Natural Places	Morris	Harding Twp	400,000	
(l) Helping People Help Themselves	Feinbloom Field	Passaic	Pompton Lakes Boro	167,500	
(m) Historical Society of Princeton	Urdike Farm Acq	Mercer	Princeton Twp	400,000	
(n) Hunterdon Land Trust Alliance	Hunterdon Open Space	Hunterdon	All municipalities	400,000	
(o) Monmouth Conservation Foundation	Open Space Plans 2	Monmouth	All municipalities	400,000	
(p) Montgomery Friends of Open Space	Montgomery Conservation Plan	Somerset	Montgomery Twp	400,000	
(q) Morris Land Conservancy	Priority Areas Acq	Essex	Livingston Twp	400,000	
		Morris	Chatham Twp Denville Twp East Hanover Twp Florham Park Boro Hanover Twp Jefferson Twp Kinnelon Boro Mine Hill Twp Montville Twp Morris Twp Mount Olive Twp Parsippany-Troy Hills Twp Pequannock Twp Randolph Twp Rockaway Twp Roxbury Twp Peapack-Gladstone Boro		
		Somerset	Byram Twp Green Twp Hampton Twp Vernon Twp Greenwich Twp Plumsted Twp		
		Sussex			
(r) National Biodiversity Parks	National Biodiversity Parks Ocean County	Warren Ocean		400,000	

(s) Natural Lands Trust	Delaware Estuaries Acq	Cumberland	Commercial Twp Downe Twp Maurice River Twp Millville City Stow Creek Twp	400,000
		Salem	Alloway Twp Lower Alloways Creek Twp Quinton Twp	
(t) New Jersey Conservation Foundation	Project Priority Areas			800,000
		Arcadia Lake Arthur Kill Greenway	Passaic Middlesex Union	
	Black River Greenway/ N. Branch of Raritan	Hunterdon	Readington Twp Tewksbury Twp	
		Morris Somerset	Mendham Twp Bedminster Twp Bernardsville Boro Far Hills Boro Peapack-Gladstone Boro	
	Burden Hill Forest Protection Initiative	Cumberland	Stow Creek Twp	
		Salem	Alloway Twp Lower Alloways Creek Twp Quinton Twp	
	Camden Parks & Greenways Forked River Mountain Add Pequannock Watershed Sparta Mountain Greenway	Camden	Camden City	
		Ocean	Lacey Twp	
	Wickecheoke Creek Acq	Passaic	West Milford Twp	
		Morris	Jefferson Twp	
Sussex		Byram Twp Sparta Twp Wantage Twp		
(u) Passaic River Coalition	Passaic River Preservation Project	Hunterdon	Delaware Twp Kingwood Twp Raritan Twp	400,000
		Bergen	Garfield City Lyndhurst Twp Mahwah Twp	
		Essex Morris	Livingston Twp Denville Twp Jefferson Twp Kinnelon Boro Riverdale Boro	

		Passaic	Bloomington Boro Paterson City Ringwood Boro Wanaque Boro Wayne Twp West Milford Twp	
		Somerset	Bernards Twp	
		Sussex	Hardyston Twp Sparta Twp	
(v) Ridge and Valley Conservancy	Open Space Conservation Plan	Sussex	Andover Boro Andover Twp Frankford Twp Fredon Twp Green Twp Hampton Twp Hardyston Twp Lafayette Twp Sandyston Twp Stillwater Twp Wantage Twp	400,000
		Warren	Allamuchy Twp Blairstown Twp Frelinghuysen Twp Hardwick Twp Hope Twp Knowlton Twp Mansfield Twp White Twp	
(w) South Jersey Land Trust	Raccoon and Oldmans Creek Watersheds	Gloucester	East Greenwich Twp Harrison Twp South Harrison Twp Washington Twp Woolwich Twp	400,000
(x) Tewksbury Land Trust	Land Acq	Hunterdon	Tewksbury Twp	400,000
(y) The Nature Conservancy	Priority Area Acquisition Cape May Project Area	Cape May	Cape May City Cape May Point Boro Dennis Twp Lower Twp Middle Twp West Cape May Boro	800,000
	Delaware Bay Greenway	Cumberland Cumberland	Maurice River Twp Commercial Twp Downe Twp Fairfield Twp Lawrence Twp Maurice River Twp Millville City	
	High Mt. Project Area	Passaic	North Haledon Boro Wayne Twp	

	Limestone Forest Acq	Sussex	Andover Boro Andover Twp Frankford Twp Fredon Twp Green Twp Hampton Twp Lafayette Twp Newton Town Stillwater Twp Wantage Twp	
		Warren	Allamuchy Twp Blairstown Twp Frelinghuysen Twp Hardwick Twp Hope Twp	
	Maurice River Project Area	Cumberland	Maurice River Twp Millville City	
(z) Trust For Public Land		Salem	Pittsgrove Twp	800,000
	Atlantic Balanced Communities Acq	Atlantic	Egg Harbor Twp Galloway Twp Hamilton Twp	
	Bergen Co. Open Space Partnership	Bergen	All municipalities	
	Camden Balanced Communities Acq	Camden	Berlin Boro Cherry Hill Twp Clementon Boro Gloucester Twp Haddon Twp Lindenwold Boro Voorhees Twp	
	Century Plan Acq	Monmouth	Freehold Twp	
		Ocean	Barneget Light Boro Berkeley Twp Brick Twp Dover Twp Eagleswood Twp Jackson Twp Lacey Twp Little Egg Harbor Twp Long Beach Twp Manchester Twp Stafford Twp Tuckerton Boro	
	Congress Hall Lawn Acq	Cape May	Cape May City	
	Delaware River Inland	Burlington	Mansfield Twp Mt. Laurel Twp Springfield Twp	

Harbor Estuary Acq	Bergen	East Rutherford Boro
	Hudson	Jersey City Secaucus Town
	Middlesex	Carteret Boro Woodbridge Twp
	Monmouth	Aberdeen Twp Atlantic Highlands Boro Fair Haven Boro Hazlet Twp Highlands Boro Matawan Boro Keansburg Boro Keyport Boro Middletown Twp Rumson Boro Union Beach Boro
	Union	Linden City Rahway City
Hardyston Twp Open Space Hunterdon Co. Open Space Partnership	Sussex	Hardyston Twp
	Hunterdon	Alexandria Twp Bethlehem Twp Califon Boro Clinton Town Clinton Twp Glen Gardner Boro Hampton Boro High Bridge Boro Holland Twp Lebanon Boro Lebanon Twp Tewksbury Twp Union Twp Washington Twp
Long Valley Open Space Acq	Morris	
Morris Open Space Acq	Morris	Harding Twp Mount Olive Twp Rockaway Twp Roxbury Twp Sparta Twp
Sparta Open Space	Sussex	
Upper Delaware River Watershed	Hunterdon	Alexandria Twp Bethlehem Twp Glen Gardner Boro Hampton Boro Holland Twp Lebanon Boro Lebanon Twp
	Morris	Jefferson Twp Mount Arlington Boro Mount Olive Twp

			Netcong Boro	
			Roxbury Twp	
			Washington Twp	
		Somerset	Peapack-Gladstone Boro	
		Sussex	Andover Boro	
			Andover Twp	
			Branchville Boro	
			Byram Twp	
			Frankford Twp	
			Fredon Twp	
			Green Twp	
			Hampton Twp	
			Hardyston Twp	
			Hopatcong Boro	
			Lafayette Twp	
			Montague Twp	
			Newton Town	
			Sandyston Twp	
			Sparta Twp	
			Stanhope Twp	
			Stillwater Twp	
			Walpack Twp	
			Wantage Twp	
		Warren	Allamuchy Twp	
			Alpha Boro	
			Belvidere Town	
			Blairstown Twp	
			Franklin Twp	
			Frelinghuysen Twp	
			Greenwich Twp	
			Hackettstown Town	
			Hardwick Twp	
			Harmony Twp	
			Hope Twp	
			Independence Twp	
			Knowlton Twp	
			Liberty Twp	
			Lopatcong Twp	
			Mansfield Twp	
			Oxford Twp	
			Phillipsburg Town	
			Pohatcong Twp	
			Washington Boro	
			Washington Twp	
			White Twp	
			Mahwah Twp	
		Bergen		
	Wanaque Gap			
	Acq			
		Passaic	Ringwood Boro	
(aa) Washington	Schooley's Mtn	Morris	Washington Twp	400,000
Twp Land Trust	Corridor & Vicinity			
(bb) YMCA of	Camp Zehnder	Monmouth	Wall Twp	<u>400,000</u>
W. Monmouth/	YMCA Open			
Comm. YMCA	Space Acq			

TOTAL**\$11,987,500**

(2) There is appropriated from the Garden State Green Acres Preservation Trust Fund to the Department of Environmental Protection the sum of \$4,050,750 to provide grants to assist qualifying tax exempt nonprofit organizations to develop lands for recreation and conservation purposes. The following projects are eligible for funding with the moneys appropriated pursuant to this paragraph:

Nonprofit Organization	Project	County	Municipality	Approved Amount
Boys and Girls Club	Branch Brook Park Middle Div	Essex	Newark City	\$ 250,000
Branch Brook Park Alliance	Branch Brook Park Renovations	Essex	Newark City	250,000
Eco Living Fellowship, Inc	Eco Center at Wood Creek Park	Gloucester	Woodbury City	53,750
Grover Cleveland Park Conservancy	Grover Cleveland Park Restoration Project	Essex	Caldwell Boro Twp Essex Fells Twp	400,000
Irvington Amateur Radio Team	Irvington Park Rehabilitation Project	Essex	Irvington Twp	400,000
Isles Inc.	Perry St. Children's Garden/ Roberto Clemente Park	Mercer	Trenton City	147,000
Liga Roberto Clemente De Newark, Inc	Branch Brook Park Middle Div	Essex	Newark City	250,000
Montclair United Soccer Club	Brookdale Park Phase II-Athletic Fields	Essex	Montclair Twp	400,000
North Ward Center	Branch Brook Park Middle Div	Essex	Newark City	250,000
Teaneck Creek Conservancy	Outdoor Classroom & Boardwalk	Bergen	Teaneck Twp	50,000
The Green Fields Foundation	Brookdale Park Phase II, Track Improvements	Essex	Bloomfield Twp Montclair Twp	400,000
Trust for Public Land	Multi Park Improvements	Essex	Newark City	400,000
Weequahic Park Association	Weequahic Lake Restoration	Essex	Newark City	400,000
West Side Park Conservancy	West Side Park Field House Restroom Reconstruction	Essex	Newark City	<u>400,000</u>

TOTAL**\$4,050,750**

(3) Any transfer of any funds, or change in project sponsor, site, or type, listed in this subsection shall require the approval of the Joint Budget Oversight Committee or its successor.

b. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, any project of a qualifying tax exempt nonprofit organization that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes shall be eligible to receive additional funding, as determined by the Department of Environmental Protection, subject to the approval of the Joint Budget Oversight Committee or its successor.

c. There is reappropriated to the Department of Environmental Protection the unexpended balances, due to project withdrawals, cancellations, or cost savings, of the amounts appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund to assist qualifying tax exempt nonprofit organizations to acquire or develop lands for recreation and conservation purposes, for the purpose of providing additional funding, as determined by the Department of Environmental Protection, to any project of a qualifying tax exempt nonprofit organization that previously received funding appropriated or reappropriated from any Green Acres bond act, any annual appropriations act, or the Garden State Green Acres Preservation Trust Fund for recreation and conservation purposes, subject to the approval of the Joint Budget Oversight Committee or its successor. Any such additional funding provided from a Green Acres bond act may include administrative costs.

d. For the purposes of this section, "Green Acres bond act" means P.L.1995, c.204, P.L.1992, c.88, and P.L.1989, c.183.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 271

AN ACT appropriating \$45,220,823 from the "Garden State Farmland Preservation Trust Fund" and certain farmland preservation bond funds for farmland preservation purposes.

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

1. a. There is appropriated to the State Agriculture Development Committee the following sums for the purpose of providing grants to counties and municipalities for up to 80% of the cost of acquisition of development easements on farmland for projects approved as eligible for such funding pursuant to subsection b. of this section, provided that any funds received for the transfer of a development easement shall be dedicated to the future purchase of development easements:

(1) \$31,008,473 from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L. 1999, c. 152 (C. 13:8C-20);

(2) \$590,400 from the "Garden State Farmland Preservation Trust Fund," made available due to project withdrawals and canceled obligations;

(3) \$1,998,221 from the "1995 Farmland Preservation Fund," established pursuant to section 25 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L. 1995, c. 204, made available due to interest earnings;

(4) \$2,210,050 from the "1995 Farmland Preservation Fund," made available due to project withdrawals and canceled obligations; and

(5) \$1,192,856 from the "1992 Farmland Preservation Fund," established pursuant to section 24 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L. 1992, c. 88, made available due to interest earnings.

The total expenditure by the State Agriculture Development Committee from the list of eligible projects in subsection b. of this section totaling \$42,275,000 shall not exceed \$37,000,000.

b. The following projects are eligible for funding with the monies appropriated pursuant to subsection a. of this section:

Project (Farm)	County	Municipality	Acres (+/-)	Amount of Grant Not to Exceed
Brooks, E.	Bergen	Closter Boro	11	\$1,950,000
Burlington County/ Durr, J.	Burlington	Chesterfield Twp North Hanover Twp	27	125,000
Burlington County/ Walton, M.	Burlington	Eastampton Twp	205	675,000
Burlington County/ Probasco, C. & J.	Burlington	North Hanover Twp	309	1,600,000
Burlington County/ Kaelin, V. & M.	Burlington	Pemberton Twp	30	100,000

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Cape May County/ Barber, G. & L.	Cape May	Middle Twp	18	125,000
Sorantino, J. & E.	Cumberland	Fairfield Twp	186	225,000
DeCou Hilltop Orchards, Inc.	Cumberland	Hopewell Twp	68	150,000
Ansink, C.	Cumberland	Upper Deerfield Twp	54	100,000
Flanegan, B.	Cumberland	Upper Deerfield Twp	63	125,000
McCracken, D. & H.	Cumberland	Upper Deerfield Twp	19	75,000
Luccarella, J.	Gloucester	Elk Twp	82	225,000
Gloucester County/ Hurff, M. & D.	Gloucester	Elk Twp	239	675,000
	Salem	Franklin Twp Upper Pittsgrove Twp		
Wagner, D.	Gloucester	Franklin Twp	41	150,000
Rowand, B.	Gloucester	Glassboro Boro	23	200,000
Rowand, B. & S.	Gloucester	Glassboro Boro	7	75,000
Rowand, R. & D.	Gloucester	Glassboro Boro	12	125,000
Griffin, D.	Gloucester	Harrison Twp	68	375,000
Blue Bell Fishery, LLP	Gloucester	Monroe Twp	113	175,000
Genova, J.	Gloucester	Monroe Twp	32	250,000
Gloucester County Fish & Game Assoc	Gloucester	Monroe Twp	312	150,000
Marchisello, F.	Gloucester	Monroe Twp	33	125,000
Horner, M.	Gloucester	South Harrison Twp	34	200,000
Alexandria Twp	Hunterdon	Alexandria Twp	129	525,000
Alexandria Twp/ W. Stamets Estate	Hunterdon	Alexandria Twp	83	300,000
Ri Arm Corporation	Hunterdon	Alexandria Twp	44	225,000
Bush, E. & E.	Hunterdon	Alexandria Twp	45	200,000
Spencer, J. & L.	Hunterdon	Milford Boro Clinton Twp Lebanon Boro	80	1,125,000
Pauch, A. & A.	Hunterdon	Delaware Twp	78	450,000
Kozak, P. & E.	Hunterdon	Holland Twp	123	375,000
LaFevre, R. & P.	Hunterdon	Holland Twp	59	250,000
Lebanon Twp/ Nagie, P.	Hunterdon	Lebanon Twp	71	500,000
Weeks, J. & M.	Hunterdon	Lebanon Twp	105	875,000
Elbert, O.	Hunterdon	Raritan Twp	90	850,000
Raritan Twp/ Balek	Hunterdon	Raritan Twp	56	700,000

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Whitehouse, E. (Quick River Farm)	Hunterdon	Raritan Twp	42	550,000
Eggemann, G.	Hunterdon	Readington Twp	41	300,000
McIntyre, R & Perrine, W.	Mercer	Washington Twp	12	175,000
Washington Twp/ Bresnahan	Mercer	Washington Twp	72	300,000
Washington Twp/ Rapant	Mercer	Washington Twp	10	125,000
Iafelice, A. & A.	Middlesex	Cranbury Twp	32	325,000
Birardi, M. & S.	Middlesex	Old Bridge Twp	60	2,600,000
Kizis, M. & B.	Monmouth	Upper Freehold Twp	11	75,000
O'Hare, M. & D.	Monmouth	Upper Freehold Twp	18	75,000
Sensi, H. & K.	Monmouth	Upper Freehold Twp	18	125,000
Smith, J.	Monmouth	Upper Freehold Twp	18	125,000
Trenton, A. & B.	Monmouth	Upper Freehold Twp	22	150,000
Valnoski, M.	Monmouth	Upper Freehold Twp	20	125,000
Morris County/ Kincaid	Morris	Boonton Twp	41	750,000
Chester Twp/ Schmitz	Morris	Chester Twp	191	4,025,000
Degnan, J. & M.	Morris	Chester Twp	51	775,000
Estate of E. Allen	Morris	Chester Twp	51	875,000
Shaffer Farms LLC	Morris	Chester Twp	37	775,000
Nagro, C. & Lobel, S.	Morris	Harding Twp	20	1,775,000
Estate of J. Backer	Morris	Mendham Twp	37	750,000
Mount Olive Twp	Morris	Mount Olive Twp	64	475,000
Winters, E.	Morris	Washington Twp	12	200,000
Yow, A.	Morris	Washington Twp	15	350,000
Posner, M.	Ocean	Jackson Twp	25	325,000
Kellogg, P.	Somerset	Bedminster Twp	318	3,600,000
Rhoda, D. & S.	Somerset	Montgomery Twp	29	225,000
GGE Ventures - G. Thomas	Sussex	Frankford Twp	77	200,000
Tipton, P. & Grillo, M.	Sussex	Frankford Twp	73	250,000
Tricer Mgt. - N. Cerbo	Sussex	Frankford Twp	220	550,000
Van Wingerden, W. & C.	Sussex	Frankford Twp	77	250,000

Barnitt, R.	Sussex	Frankford Twp	69	150,000
		Wantage Twp		
Chiusano, C., M. & B. & Michaluk, P.	Sussex	Hardyston Twp	54	175,000
Fountain House of NJ	Sussex	Montague Twp	467	625,000
Mortimer, C.	Sussex	Montague Twp	321	475,000
Ayers, J. & L.	Sussex	Sandyston Twp	73	175,000
		Stillwater Twp		
Westbrook, J. & K.	Sussex	Frelinghuysen Twp	112	250,000
	Warren			
Afran, N.	Sussex	Wantage Twp	39	75,000
Dreisbach, J.	Sussex	Wantage Twp	236	575,000
Oberly, J.	Warren	Alpha Boro	155	725,000
		Pohatcong Twp		
Warren County/ Pehowski, L.	Warren	Blairstown Twp	170	575,000
Gurba, S.	Warren	Frelinghuysen Twp	171	525,000
		Frelinghuysen Twp		
R. G. Post Trust	Warren	Greenwich Twp	40	125,000
		Greenwich Twp		
Estate of B. Hamlen	Warren	Greenwich Twp	87	375,000
		Greenwich Twp		
Warren County/ Estate of E. Rinehart	Warren	Greenwich Twp	105	625,000
Matuch, W. & M.	Warren	Greenwich Twp	57	125,000
		Pohatcong Twp		
Zahn, S.	Warren	Knowlton Twp	32	125,000
Warren County/ Smith, M.	Warren	Pohatcong Twp	187	750,000
Bullock Farm	Warren	White Twp	89	275,000

2. a. There is appropriated from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L.1999, c.152 (C.13:8C-20), to the State Agriculture Development Committee the sum of \$8,220,823, made available due to project withdrawals and canceled obligations, for the purpose of providing grants to counties and municipalities for up to 80% of the cost of acquisition of development easements on farmland located in the pinelands area, provided that any funds received for the transfer of a development easement shall be dedicated to the future purchase of development easements, for projects approved as eligible for such funding pursuant to subsection b. of this section.

The total expenditure by the State Agriculture Development Committee from the list of eligible projects in subsection b. of this section totaling \$9,575,000 shall not exceed \$8,220,823.

b. The following projects are eligible for funding with the monies appropriated pursuant to subsection a. of this section:

Project (Farm)	County	Municipality	Acres (+/-)	Amount of Grant Not to Exceed
Pellegrini Farms	Atlantic	Buena Boro	37	\$150,000
Kertz, E. & L.	Atlantic	Galloway Twp	30	100,000
Kertz, J. & R.	Atlantic	Galloway Twp	60	125,000
Atlantic Blueberry Co.	Atlantic	Hamilton Twp	1,448	2,100,000
Berenato, A.	Atlantic	Hammonton Town	62	200,000
Coia, A. & N.	Atlantic	Hammonton Town	107	375,000
Colasurdo, S.	Atlantic	Hammonton Town	48	150,000
DiMeo, W., M. & F.	Atlantic	Hammonton Town	64	225,000
Macrie, P., N. & M.	Atlantic	Hammonton Town	120	350,000
Miller, F.	Atlantic	Hammonton Town	144	225,000
Wuillermin, E. Jr.	Atlantic	Hammonton Town	19	100,000
Wuillermin, E. & M.	Atlantic	Hammonton Town	70	250,000
Columbia Properties	Atlantic	Mullica Twp	39	150,000
Franceschini, R.	Atlantic	Mullica Twp	100	325,000
Franceschini, S.	Atlantic	Mullica Twp	107	325,000
Merlino, C. & M.	Atlantic	Mullica Twp	104	350,000
Variety Farms	Atlantic	Mullica Twp	414	1,100,000
Thompson, K. & S.	Burlington	Pemberton Twp	132	325,000
Abrams, E.. & P.	Burlington	Shamong Twp	118	375,000
Abrams, R. & R.	Burlington	Shamong Twp	65	200,000
DiMeo, M., F. & W.	Burlington	Shamong Twp	50	150,000
Albert-Puleo, N. & A.	Burlington	Southampton Twp	163	400,000
Eckert, L. & P.	Burlington	Tabernacle Twp	68	225,000
Cutts, W.	Burlington	Washington Twp	261	375,000
Bates Run Farms	Camden	Winslow Twp	56	225,000
Donio, D. & N.	Camden	Winslow Twp	50	175,000
Donio, D. & N.	Camden	Winslow Twp	38	125,000
Donio, D. & N.	Camden	Winslow Twp	16	75,000
Donio, D. & N.	Camden	Winslow Twp	11	50,000
Guempel, G. & G.	Ocean	Manchester Twp	38	100,000

Menzer, C.	Ocean	Manchester Twp	56	175,000
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3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L. 1999, c. 152 (C.13:8C-1 et seq.), P.L. 1995, c. 204, P.L. 1992, c. 88, and P.L. 1983, c. 32 (C.4:1C-11 et seq.), as appropriate.

4. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 272

AN ACT appropriating \$44,031,468 from the "Garden State Farmland Preservation Trust Fund" for farmland preservation purposes.

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

1. a. There is appropriated to the State Agriculture Development Committee the following sums for the purpose of providing planning incentive grants to counties and municipalities pursuant to the provisions of P.L. 1999, c. 180 (C.4:1C-43.1 et seq.):

(1) \$20,040,574 from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L. 1999, c. 152 (C.13:8C-20); and

(2) \$23,990,894 from the "Garden State Farmland Preservation Trust Fund," made available due to project withdrawals and canceled obligations.

b. The following projects are eligible for funding with the monies appropriated pursuant to subsection a. of this section:

Applicant	County	Municipality	Approved Grant Not To Exceed
Burlington County (Berry Production Project Area - Pemberton, Tabernacle, Washington, & Woodland Twps)	Burlington	Pemberton Twp Tabernacle Twp Washington Twp Woodland Twp	\$1,500,000
Burlington County (Rancocas Project Area - Pemberton)	Burlington	Pemberton Twp Southampton Twp	983,452

& Southampton Twps) Burlington County (Route 206 South Project Area - Medford, Shamong, Springfield, & Tabernacle Twps)	Burlington	Medford Twp Shamong Twp Springfield Twp Tabernacle Twp	1,500,000
Burlington County (Southampton Twp)	Burlington	Southampton Twp	949,375
North Hanover Twp	Burlington	North Hanover Twp	545,407
Alexandria Twp (Phase 1)	Hunterdon	Alexandria Twp	714,696
Alexandria Twp (Phase 2)	Hunterdon	Alexandria Twp	570,608
Bethlehem Twp (Charlestown Road Area)	Hunterdon	Bethlehem Twp	273,412
Bethlehem Twp (Musconetcong Valley ADA)	Hunterdon	Bethlehem Twp	146,812
Delaware Twp (Covered Bridge/ Dilts Corner)	Hunterdon	Delaware Twp Kingwood Twp	771,862
East Amwell Twp	Hunterdon	East Amwell Twp	335,231
Franklin Twp	Hunterdon	Franklin Twp	1,500,000
Holland Twp	Hunterdon	Holland Twp	134,221
Lebanon Twp	Hunterdon	Lebanon Twp	617,400
Raritan Twp (NW Project Area)	Hunterdon	Raritan Twp	349,778
Raritan Twp (SW Project Area)	Hunterdon	Raritan Twp	238,852
Readington Twp (Phase I)	Hunterdon	Readington Twp	484,770
Readington Twp (Phase II)	Hunterdon	Readington Twp	399,846
Tewksbury Twp (NW Area)	Hunterdon	Tewksbury Twp	1,250,806
Tewksbury Twp (Oldwick Area East)	Hunterdon	Tewksbury Twp	633,420
Tewksbury Twp (Oldwick NW Area)	Hunterdon	Tewksbury Twp	298,800
Tewksbury Twp (Pottersville Project Area - #4)	Hunterdon	Tewksbury Twp	304,725
Hopewell Twp	Mercer	Hopewell Twp	1,140,000
Colts Neck Twp	Monmouth	Colts Neck Twp	2,756,785
Holmdel Twp	Monmouth	Holmdel Twp	638,038
Howell Twp	Monmouth	Howell Twp	330,563
Manalapan Twp (Matchaponix Brook Watershed, Manalapan Brook Watershed East,	Monmouth	Manalapan Twp	3,000,000

Manalapan Brook Watershed West, & Manalapan Brook Headwaters Project Areas)	Monmouth	Millstone Twp	2,250,000
Monmouth County (Battleground, Back Bone Hill, Spring Road, Rocky Brook, Propdelin Way Greenway Project Areas)	Monmouth	Upper Freehold Twp	2,569,866
Upper Freehold Twp	Morris	Chester Twp	1,140,992
Morris County (Chester Twp)	Morris	Washington Twp	1,121,748
Morris County (Long Valley, Washington Twp)	Morris	Washington Twp	618,187
Washington Twp (Fairmount Black River Project Area)	Somerset	Bedminster Twp	522,000
Bedminster Twp (Black River Corridor)	Somerset	Bedminster Twp	1,230,188
Bedminster Twp (Lamington Road East PA)	Somerset	Franklin Twp	1,625,000
Franklin Twp (Project Area I - Central)	Somerset	Franklin Twp	750,000
Franklin Twp (Project Area II - South)	Somerset	Hillsborough Twp	1,350,000
Hillsborough Twp (Mill Lane Project Area)	Somerset	Hillsborough Twp	1,350,000
Hillsborough Twp (South Project Area)	Somerset	Peapack-Gladstone Boro	1,965,600
Peapack-Gladstone Boro (Essex Hunt Club Region)	Warren	Franklin Twp	843,587
Franklin Twp (Stage 1)	Warren	Greenwich Twp	146,726
Greenwich Twp	Warren	Harmony Twp	413,609
Harmony Twp (Stage 1 - Central)	Warren	Harmony Twp	1,256,467
Harmony Twp (Stages 2 & 3 - South & North)	Warren	Knowlton Twp	380,976
Knowlton Twp (Project Area 1)	Warren	Blairstown Twp	400,000
Knowlton Twp (Project Area 2)		Knowlton Twp	

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Pohatcong Twp - Warren County (Grasslands ADA)	Warren	Pohatcong Twp	334,155
Pohatcong Twp - Warren County (Valleys & Ridge ADA)	Warren	Pohatcong Twp	1,050,472
White Twp (Stage 1)	Warren	White Twp	343,036

2. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L. 1999, c. 152 (C.13:8C-1 et seq.), P.L. 1983, c. 32 (C.4:1C-11 et seq.), and P.L. 1999, c. 180 (C.4:1C-43.1 et seq.), as appropriate.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 273

AN ACT appropriating \$38,445,876 from the "Garden State Farmland Preservation Trust Fund" for farmland preservation purposes, and canceling certain prior appropriations for withdrawn farmland preservation projects.

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

1. a. There is appropriated to the State Agriculture Development Committee the following sums for the purpose of providing for the cost of acquisition by the committee of development easements on farmland for projects approved as eligible for such funding pursuant to subsection b. of this section:

(1) \$25,400,953 from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L. 1999, c. 152 (C.13:8C-20); and

(2) \$2,445,107 from the "Garden State Farmland Preservation Trust Fund," made available due to project withdrawals and canceled obligations.

The total expenditure by the State Agriculture Development Committee from the list of eligible projects in subsection b. of this section totaling \$46,700,000 shall not exceed \$27,846,060.

b. The following projects are eligible for funding with the moneys appropriated pursuant to subsection a. of this section:

Project (Farm)	County	Municipality	Acres (+/-)	Amount Not to Exceed
Estate of A. De Maria	Atlantic	Buena Boro	33	\$175,000
Irick, J.	Atlantic	Buena Boro	30	150,000
Hunter's Farm, Inc.	Burlington	Cinnaminson Twp	86	2,150,000
MKC Partners	Burlington	Moorestown Twp	139	3,450,000
Andrew, N. & Herenchak, A.	Burlington	North Hanover Twp	62	575,000
Fisher, G.	Cumberland	Fairfield Twp	25	100,000
Mixner, L. and D.	Cumberland	Hopewell Twp	242	850,000
O'Donnell, C. & J. (Rocking Horse Farm)	Cumberland	Vineland City	82	425,000
Eachus, V. & P.	Gloucester	Mantua Twp	96	1,000,000
Darling, J. & F.	Hunterdon	Delaware Twp	17	250,000
Thompson Realty (Klein)	Hunterdon	Delaware Twp	146	1,425,000
Thompson Realty (Pavlica Rd)	Hunterdon	Delaware Twp	99	1,050,000
H. Harrison Living Trust	Hunterdon	East Amwell Twp	105	1,000,000
Healy-Wielenta (Valley View)	Hunterdon	East Amwell Twp	92	850,000
Lanwin Development (Brokaw)	Hunterdon	East Amwell Twp	86	800,000
Princeton RL (Drake)	Hunterdon	East Amwell Twp	87	825,000
Rynearson, H.	Hunterdon	East Amwell Twp	82	775,000
Verity, H.	Hunterdon	Franklin Twp	92	700,000
Allen, J. & R.	Hunterdon	Readington Twp	122	1,575,000
Lanwin Development (Merrick Rd)	Mercer	Hamilton Twp	199	2,050,000
Estate of S. Kurtz	Mercer	Hopewell Twp	26	400,000
Hopewell Valley Enterprises, LLC	Mercer	Hopewell Twp	82	1,200,000
Cranbury Twp/ Barclay	Middlesex	Cranbury Twp	184	3,200,000
Reed Family Real Estate LLC #1	Monmouth	Upper Freehold Twp	209	4,175,000
Reed Family Real Estate LLC #2	Monmouth	Upper Freehold Twp	116	1,625,000
Reed Family Real Estate LLC #3	Monmouth	Upper Freehold Twp	95	1,350,000

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Van Dart Acres (Church of Light)	Morris	Mount Olive Twp	69	1,100,000
Leslie, Walter T. and Fay S.	Salem	Alloway Twp	122	325,000
Sloat, R.	Salem	Alloway Twp	94	200,000
Hancock, J. & B.	Salem	Elsinboro Twp	75	125,000
Michalak, Sharon	Salem	Lower Alloways Creek Twp	82	125,000
Shidner, H.	Salem	Lower Alloways Creek Twp	76	175,000
Doak, J. and C.	Salem	Mannington Twp	210	525,000
Myers, C.	Salem	Mannington Twp	112	375,000
Wright, G. and R.	Salem	Mannington Twp	247	700,000
Banff, J. & J.	Salem	Oldmans Twp	110	225,000
Hitchner, G. and S.	Salem	Pilesgrove Twp	496	1,825,000
Myers, E.	Salem	Pilesgrove Twp	75	250,000
Myers, H.	Salem	Pilesgrove Twp	105	300,000
DuBois, R. & M.	Salem	Pittsgrove Twp	129	350,000
Brooks, W. & D.	Salem	Upper Pittsgrove Twp	159	525,000
Newkirk, K. & H.	Salem	Upper Pittsgrove Twp	94	325,000
Yablonsky, J.	Somerset	Hillsborough Twp	36	500,000
Drake, J.	Somerset	Montgomery Twp	71	1,650,000
Northwest Jersey Dev. Corp (Stamato)	Sussex	Lafayette Twp	67	75,000
Blairstown Twp/ DeBlock	Warren	Blairstown Twp	165	1,025,000
Van Grouw, W. & D. (Dutch Hill Farm)	Warren	Frelinghuysen Twp	99	500,000
Hoser, K.	Warren	Greenwich Twp	120	1,100,000
Rayna, J. & D.	Warren	Greenwich Twp	71	700,000
Smith, N. & V.	Warren	Greenwich Twp	126	1,175,000
Hillyerd Farm	Warren	Knowlton Twp	78	400,000

2. There is appropriated from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L. 1999, c.152 (C.13:8C-20), to the State Agriculture Development Committee the sum of \$10,599,816

from proceeds received from the resale or lease of farmland previously acquired in fee simple by the committee, and such sums from any additional proceeds which may become available by the effective date of this act due to the resale or lease of farmland previously acquired in fee simple by the committee, for the purpose of providing for the cost of acquisition by the committee of fee simple titles to farmland for farmland preservation purposes. Any such farmland acquired in fee simple with moneys appropriated pursuant to this section shall be offered for resale or lease with agricultural deed restrictions.

3. a. Of the moneys appropriated or reappropriated pursuant to P.L. 1998, c.6, P.L. 1998, c.7, P.L. 1998, c.8, P.L. 1999, c.35, P.L. 1999, c.36, P.L. 1999, c.37, and P.L. 2001, c.306, from the "1995 Farmland Preservation Fund," established pursuant to section 25 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L. 1995, c.204, a sum of \$2,210,050 is canceled due to project withdrawals.

b. Of the moneys appropriated or reappropriated pursuant to P.L. 1999, c.138, from the "Garden State Preservation Trust Fund Account," and pursuant to P.L. 2000, c.49, P.L. 2000, c.50, P.L. 2000, c.51, P.L. 2000, c.78, P.L. 2000, c.79, P.L. 2000, c.168, P.L. 2000, c.169, P.L. 2000, c.176, P.L. 2001, c.103, P.L. 2001, c.104, P.L. 2001, c.105, P.L. 2001, c.181, P.L. 2001, c.182, P.L. 2001, c.183, P.L. 2001, c.184, P.L. 2001, c.185, P.L. 2001, c.306, P.L. 2003, c.80, P.L. 2003, c.81, P.L. 2003, c.82, and P.L. 2003, c.83, from the "Garden State Farmland Preservation Trust Fund," established pursuant to section 20 of P.L. 1999, c.152 (C.13:8C-20), a sum of \$36,347,224 is canceled due to project withdrawals.

4. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L. 1999, c.152 (C.13:8C-1 et seq.), P.L. 1995, c.204, P.L. 1992, c.88, and P.L. 1983, c.32 (C.4:1C-11 et seq.), as appropriate.

5. This act shall take effect immediately.

Approved January 14, 2003.

CHAPTER 274

AN ACT concerning the approval of the use of certain bond proceeds for economic growth and development projects, amending P.L. 2003, c.166.

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

1. Section 9 of P.L.2003, c.166 (C.34:1B-139.1) is amended to read as follows:

C.34:1B-139.1 Powers of authority relative to bonds.

9. Notwithstanding the provisions of any law, rule, regulation or order to the contrary:

a. The authority shall have the power, pursuant to the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by money received pursuant to this act for the purpose of (1) providing funds for the payment, in full or in part, of the grants provided to businesses under sections 1 through 14 of P.L.1996, c.26 (C.34:1B-124 through 34:1B-137); (2) providing funds to be used by the authority only for the purposes enumerated in subsections a. and b. of section 4 of P.L.1992, c.16 (C.34:1B-7.13) for payments to, or for the benefit of, designated industries that have the greatest potential to create eligible positions and promote State development strategies; and (3) and any costs related to the issuance of such bonds. The authority may establish reserve or other funds to further secure bonds and refunding bonds. The bonds shall be in the amount to yield proceeds to fund, all or in part, the payment of grants provided to business under this act, plus additional bonds to pay for the costs of issuance. Notwithstanding anything to the contrary, bonds issued for the purposes of paragraph (2) of this subsection, excluding refunding bonds, may only be issued upon certification by the authority at the time of issuance to the effect that payments for principal and interest on such bonds and any additional costs authorized by that paragraph (2) may not exceed an amount equivalent to the residual withholdings anticipated at the time of issuance of such bonds for the applicable fiscal years.

b. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds, pledge the contract with the State Treasurer, provided for in section 10 of P.L.2003, c.166 (C.34:1B-139.2), or any part thereof, for the payment or redemption of the bonds or refunding bonds, and covenant as to the use and disposition of money available to the authority for payments of bonds and refunding bonds. All costs associated with the issuance of bonds and refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to sections 10 and 11 of P.L.2003, c.166 (C.34:1B-139.2 and C.34:1B-139.3), which costs may include, but are not limited to, any costs and fees relating to the issuance of the bonds or refunding bonds, annual administrative costs and fees of the authority attributable to the payment of grants issued to businesses under this act, the fees and costs of bond counsel and any other professional fees and costs attributable to the agreements described in subsection c. of this

section. The bonds or refunding bonds shall be authorized by resolution, which shall stipulate the manner of execution and form of the bonds, whether the bonds are in one or more series, the date or dates of issue, time or times of maturity, which shall not exceed 20 years, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates, and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, conversion or registration privileges, the sources and medium of payment and place or places of payment, terms of redemption, privileges of exchangeability or interchangeability, and entitlement to priorities of payment or security in the amounts to be received by the authority pursuant to sections 10 and 11 of P.L.2003, c.166 (C.34:1B-139.2 and C.34:1B-139.3). The bonds may be sold at a public or private sale at a price or prices determined by the authority. The authority is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

c. In connection with any bonds or refunding bonds issued pursuant to this act, the authority may also enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements approved by the authority.

d. (1) No resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this act shall be adopted or otherwise made effective without the approval in writing of the State Treasurer and the Joint Budget Oversight Committee. Except as provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4), bonds or refunding bonds may be issued without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by this subsection, and without any other proceedings or the occurrence of any other conditions or other things other than those proceedings, conditions or things which are specifically required by this act.

(2) Subsequent to the issuance of bonds for the purposes of paragraph (2) of subsection a. of this section, but prior to the expenditure of the proceeds of the issuance of those bonds for any program, the authority shall provide the Joint Budget Oversight Committee with a detailed description of the program to be funded. No expenditure for such program, shall occur without approval by the committee of that program; provided however, that if the committee fails to consider any program for approval within 14 calendar days from date

of receipt of the program description from authority, each such program not considered shall be deemed approved. "Program" for purposes of this section does not include costs of issuance. In addition, the authority shall provide the committee with an itemized, detailed list of persons, businesses or other entities that will receive financing under such approved programs prior to the funding being distributed, including other public entities for the purpose of the public entity making grants, loans or entering into other financial transactions.

When the funds allocated to a public entity for the purpose of the public entity making grants, loans or entering into other financial transactions are subsequently allocated by that other public entity, the entity shall provide to the authority so that the authority can provide to the Joint Budget Oversight Committee an itemized, detailed list of persons, businesses or other entities, that will receive such funds, and the amount that each will so receive.

e. Bonds and refunding bonds issued by the authority pursuant to this act shall be special and limited obligations of the authority payable from, and secured by, such funds and moneys determined by the authority in accordance with this section. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to the provisions of this act shall not be a debt or liability of the State or any agency or instrumentality thereof, except as otherwise provided by this subsection, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

f. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of bond counsel, financial advisors and experts, placement agents, underwriters, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this act.

g. The proceeds from the sale of the bonds, other than refunding bonds, issued pursuant to this act, after payment of any costs related to the issuance of such bonds, shall be paid by the authority to be applied to the payment, in full or in part, for the purposes set forth in subsection a. of this section as directed by the State Treasurer.

h. All bonds or refunding bonds issued by the authority are deemed to be issued by a body corporate and politic of the State for an essential governmental purpose, and the interest thereon and the income derived from all funds, revenues, incomes and other moneys received for or to be received by the authority and pledged and available to pay or secure the payment on

bonds or refunding bonds and the interest thereon, shall be exempt from all taxes levied pursuant to the provisions of Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, except for transfer inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

i. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to the provisions of this act, that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State Treasurer in any manner which would jeopardize the interest of the holders or any trustee of such holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of these bonds or refunding bonds or agreements made pursuant to subsection c. of this section except that the failure of the Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

j. Notwithstanding any restriction contained in any other law, rule, regulation or order to the contrary, the State and all political subdivisions of this State, their officers, boards, commissioners, departments or other agencies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking or investment business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any sinking funds, moneys or other funds, including capital, belonging to them or within their control, in any bonds or refunding bonds issued by the authority under the provisions of this act; and said bonds and refunding bonds are hereby made securities which may properly and legally be deposited with, and received by any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

2. This act shall take effect immediately and be retroactive to September 2, 2003.

Approved January 14, 2004.

CHAPTER 275

AN ACT concerning the Governor's budget message, amending P.L.1944, c.112 and amending and supplementing P.L.1996, c.138.

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

1. Section 11 of article 3 of P.L.1944, c.112 (C.52:27B-20) is amended to read as follows:

C.52:27B-20 Governor's budget message; presentment; form.

11. The Governor shall examine and consider all requests for appropriations, together with the findings and recommendations of the Director of the Division of Budget and Accounting, and shall formulate the Governor's budget recommendations, which shall be presented as a budget message by the Governor during an appearance before a joint session of the Legislature which shall be convened at 12 noon on a date on or before the fourth Tuesday in February in each year.

The budget message shall include the proposed complete financial program of the State Government for the next ensuing fiscal year, and shall set forth in columnar form detailed as to each source of anticipated revenue and the purposes to which the recommended appropriations and permissions to spend shall apply for each spending agency in substantially the following form:

A. Revenues for the General Fund, other budgeted State revenues, all other dedicated funds, Federal aid funds, and trust funds:

(1) An estimate of all balances to be on hand on the first of July next ensuing which are to be available for appropriations, supported by the calculations used in arriving at the estimated figures;

(2) An estimate of the anticipated revenues from all sources applicable to the budget period, together with the actual amount earned from each source during the last completed fiscal year, and the estimate of revenues expected to be earned from each source for the current fiscal year.

B. (Deleted by amendment, P.L.2003, c.275).

C. Appropriations. The total of the appropriations recommended for the ensuing fiscal year in substantially the following form:

Detailed Budget:

(1) An itemized statement of all appropriation requests and requests for permission to spend from the General State Fund, other budgeted State revenues, other dedicated funds and Federal aid and trust funds;

(2) An itemized statement of the amounts recommended by the Governor with respect to item "1" above;

(3) An itemized statement of all amounts appropriated and permissions granted for the current fiscal year with respect to item "1" above;

(4) An itemized statement of all amounts appropriated and permissions granted for the last preceding fiscal year with respect to item "1" above detailed as to annual and supplemental appropriations, transfers of appropriations,

State Emergency Fund allotments, and permission to spend, as the case may be, and showing also total expenditures, reserves, lapses and unencumbered balances;

(5) In addition, such other statistical information as may more fully show comparisons and costs of the several departments.

2. Section 6 of P.L.1996, c.138 (C.18A:7F-6) is amended to read as follows:

C.18A:7F-6 Approval of budget by commissioner.

6. a. The commissioner shall not approve any budget submitted pursuant to subsection c. of section 5 of this act unless he is satisfied that the district has adequately implemented within the budget the thoroughness and efficiency standards set forth pursuant to section 4 of this act. In those instances in which a district submits a budget set at less than its minimum T&E budget, the commissioner may, when he deems it necessary to ensure implementation of standards, direct additional expenditures, in specific accounts and for specific purposes, up to the district's T&E budget. A district which submits a budget set at less than its minimum T&E budget and which fails to meet core curriculum content standards in any school year shall be required to increase expenditures so as to meet at least the minimum T&E budget within the next two budget years. In those instances in which a district submits a budget at or above its minimum T&E budget, the commissioner may likewise, when he deems it necessary to ensure implementation of standards, direct additional expenditures, in specific accounts and for specific purposes, up to the T&E budget. In all cases, including those instances in which a district submits a budget above its T&E budget, up to and including its maximum T&E budget, the commissioner may direct such budgetary reallocations and programmatic adjustments, or take such other measures, as he deems necessary to ensure implementation of the required thoroughness and efficiency standards.

b. In addition, whenever the commissioner determines, through the results of Statewide assessments conducted pursuant to law and regulation, or during the course of an evaluation of school performance conducted pursuant to section 10 of P.L.1975, c.212 (C.18A:7A-10), that a district, or one or more schools within the district, is failing to achieve the core curriculum content standards, the commissioner may summarily take such action as he deems necessary and appropriate, including but not limited to:

- (1) directing the restructuring of curriculum or programs;
- (2) directing staff retraining or reassignment;
- (3) conducting a comprehensive budget evaluation;
- (4) redirecting expenditures;
- (5) enforcing spending at the full per pupil T&E amount; and

(6) notwithstanding any provisions of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), to the contrary, reviewing the terms of future collective bargaining agreements.

For the purpose of evaluating a district's results on Statewide assessments pursuant to this subsection, the commissioner shall limit the use of these actions to those instances in which a school in a district has experienced at least three consecutive years of failing test scores.

The commissioner shall report any action taken under this subsection to the State board within 30 days. A board of education may appeal a determination that the district is failing to achieve the core curriculum content standards and any action of the commissioner to the State board.

Nothing in this section shall be construed to limit such general or specific powers as are elsewhere conferred upon the commissioner pursuant to law.

Nothing in this act shall be deemed to restrict or limit any rights established pursuant to the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), nor shall the commissioner's powers under this act be construed to permit the commissioner to restrict, limit, interfere with, participate, or be directly involved in collective negotiations, contract administration, or processing of grievances, or in relation to any terms and conditions of employment. This provision shall apply to a State-operated school district only after the terms and conditions of a contract have been finalized.

c. Each Abbott district shall submit its proposed budget for the next school year to the commissioner not later than the date prescribed for submission of all school district budgets pursuant to section 5 of P.L.1996, c.138 (C.18A:7F-5). The review of the budget shall include, but not be limited to, an assessment of efforts to reduce class sizes, increase the breadth of program offerings, and direct funds into the classroom. If the commissioner determines during the review of an Abbott district budget that funds are not appropriately directed so that students in the districts are provided the educational opportunity to meet the core curriculum content standards, the commissioner shall direct the reallocation of funds within the budget. The commissioner shall approve any transfer of funds from instructional accounts to non-instructional accounts. In addition, if the commissioner directs the reallocation of funds from or between instructional accounts or from or between non-instructional accounts in the proposed budget, the district shall not transfer any funds to or from those accounts that were subject to reallocation without the prior approval of the commissioner. The commissioner shall, for any Abbott district, when he deems it necessary to ensure implementation of the thoroughness standards, direct additional expenditures above the T&E budget in specific accounts and for specific purposes, up to the maximum T&E budget without approval of the local voters or board of school estimate, as applicable.

d. In addition to the audit required of school districts pursuant to N.J.S.18A:23-1, the accounts and financial transactions of any school district in which the State aid equals 80% or more of its net budget for the budget year shall be directly audited by the Office of the State Auditor on an annual basis.

e. Notwithstanding any provision of law to the contrary, in the review of a school district's budget pursuant to subsection c. or e. of section 5 of this act, the commissioner shall not eliminate, reduce, or reallocate funds contained within the budget for pupil transportation services provided pursuant to N.J.S.18A:39-1.1 nor require the district to eliminate these funds from the base budget and to submit a separate proposal to the voters or board of school estimate pursuant to paragraph (9) of subsection d. of section 5 of this act for the inclusion of the funds within the proposed budget. The decision to provide such pupil transportation services shall be made by the board of education of the school district. In the case of a school budget that is defeated by the voters or a budget that is not approved by the board of school estimate, that decision shall be made in consultation with the municipal governing body or board of school estimate, as appropriate, or, in the case of a regional district, the municipal governing bodies.

C.18A:7F-5c Adjustments to school budget calendar, notification of nontenured personnel.

3. Notwithstanding any other law to the contrary, the Commissioner of Education is authorized to make any adjustments to the school budget calendar and to the date for the notification of nontenured personnel pursuant to section 1 of P.L.1971, c.436 (C.18A:27-10) that are necessary to conform with the State aid notification date.

4. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 276

AN ACT establishing criminal penalties for certain violations of the "New Jersey Prevailing Wage Act" and amending P.L.1963, c.150 and P.L.1999, c.440.

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

1. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to read as follows:

C.34:11-56.35 Penalties.

11. (a) Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense.

(b) As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c.150 (C.34:11-56.25 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum

collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

(c) When the Commissioner of Labor finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

2. Section 97 of P.L.1999, c.440 (C.2C:21-34) is amended to read as follows:

C.2C:21-34 Penalty for false contract payment claims, representation, for a government contract; prevailing wage violations; grading.

97. a. A person commits a crime if the person knowingly submits to the government any claim for payment for performance of a government contract knowing such claim to be false, fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the claim is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

b. A person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract. If the contract amount is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the contract amount exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the contract amount is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

c. An employer commits a crime if the employer knowingly pays one or more employees employed in public work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) at a rate less than the rate required pursuant to that act. If the contract amount is for \$75,000.00 or above, the employer is guilty of a crime of the second degree; if the contract amount exceeds \$2,500.00, but is less than \$75,000.00, the employer is guilty of a crime of the third degree; and if the contract amount is for \$2,500.00 or less, the employer is guilty of a crime of the fourth degree. In addition, the employer shall be deemed to have caused loss to the employees in the amount by which the employees were underpaid and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other

pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 277

AN ACT concerning firearms and amending P.L.1991, c.261, N.J.S.2C:39-7 and N.J.S.2C:58-3 and supplementing Title 2C of the New Jersey Statutes.

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

1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to read as follows:

C.2C:25-21 Arrest of alleged attacker; seizure of weapons, etc.

5. a. When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if:

(1) The victim exhibits signs of injury caused by an act of domestic violence;

(2) A warrant is in effect;

(3) There is probable cause to believe that the person has violated N.J.S.2C:29-9, and there is probable cause to believe that the person has been served with the order alleged to have been violated. If the victim does not have a copy of a purported order, the officer may verify the existence of an order with the appropriate law enforcement agency; or

(4) There is probable cause to believe that a weapon as defined in N.J.S.2C:39-1 has been involved in the commission of an act of domestic violence.

b. A law enforcement officer may arrest a person; or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but where none of the conditions in subsection a. of this section applies.

c. (1) As used in this section, the word "exhibits" is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Where the victim exhibits no visible sign of injury, but states that an injury has occurred,

the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.

(2) In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of domestic violence between the parties, if any, and any other relevant factors.

(3) No victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self defense against domestic violence by an attacker.

d. (1) In addition to a law enforcement officer's authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:

(a) question persons present to determine whether there are weapons on the premises; and

(b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

(2) A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.

(3) Weapons seized in accordance with the "Prevention of Domestic Violence Act of 1991", P.L. 1991, c. 261 (C.2C:25-17 et seq.) shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may, upon notice to the owner, petition a judge of the Family Part of the Superior Court, Chancery Division, within 45 days of seizure, to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for the use, possession, or ownership of such weapons pursuant to the law governing such use, possession, or ownership, or may object to the return of the weapons on such grounds as are provided for the initial rejection or later revocation of the authorizations, or on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

A hearing shall be held and a record made thereof within 45 days of the notice provided above. No formal pleading and no filing fee shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the Superior Court, Appellate Division, in accordance with the law.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.

After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S.2C:58-3c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists.

Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

(a) With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or

(b) Order the revocation of the owner's firearms purchaser identification card or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c) Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in N.J.S.2C:64-6.

(4) A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner's intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including attorney's fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

(5) No law enforcement officer or agency shall be held liable in any civil action brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.

2. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to read as follows:

C.2C:25-29 Hearing procedure; relief.

13. a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and parenting time the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or parenting time.

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3 during the period in which the restraining order is in effect or two years whichever is greater, except that this provision shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States

or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

(1) An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act.

(2) An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing.

(3) An order providing for parenting time. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time.

(a) The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

(b) The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the parenting time order has threatened the safety and well-being of the child.

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victims of Crime Compensation Board for any and all compensation paid by the Victims of Crime Compensation Board directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the

victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

(5) An order requiring the defendant to receive professional domestic violence counseling from either a private source or a source appointed by the court and, in that event, requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling. No application by the defendant to dissolve a final order which contains a requirement for attendance at professional counseling pursuant to this paragraph shall be granted by the court unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling.

(6) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members.

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action.

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent.

(12) An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal

of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration.

(13) (Deleted by amendment, P.L.1995, c.242).

(14) An order granting any other appropriate relief for the plaintiff and dependent children, provided that the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order.

(15) An order that requires that the defendant report to the intake unit of the Family Part of the Chancery Division of the Superior Court for monitoring of any other provision of the order.

(16) In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to, behavior prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

(18) An order requiring the defendant to undergo a psychiatric evaluation.

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. Upon good cause shown, any final order may be dissolved or modified upon application to the Family Part of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based.

e. Prior to the issuance of any order pursuant to this section, the court shall order that a search be made of the domestic violence central registry.

3. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as follows:

C.2C:39-7 Certain persons not to have weapons.

6. Certain Persons Not to Have Weapons.

a. Except as provided in subsection b. of this section, any person, having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree.

b. (1) A person having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1, endangering the welfare of a child pursuant to N.J.S.2C:24-4, stalking pursuant to P.L.1992, c.209 (C.2C:12-10) or a crime involving domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19), whether or not armed with or having in his possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person having been convicted of a crime pursuant to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or controls a firearm is guilty of a crime of the second degree and upon conviction thereof, the person shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term, which shall be fixed at five years, during which the defendant shall be ineligible for parole. If the defendant is sentenced to an extended term of imprisonment pursuant to N.J.S.2C:43-7, the extended term of imprisonment shall include the imposition of a minimum term, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

(2) A person having been convicted in this State or elsewhere of a disorderly persons offense involving domestic violence, whether or not armed with or having in his possession a weapon enumerated in subsection r. of

N.J.S.2C:39-1, who purchases, owns, possesses or controls a firearm is guilty of a crime of the third degree.

(3) A person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991,c.261 (C.2C:25-17 et seq.) and whose firearm has not been returned, or who is subject to a court order prohibiting the possession of firearms issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991,c.261 (C.2C:25-17 et seq.) who purchases, owns, possesses or controls a firearm is guilty of a crime of the third degree, except that the provisions of this paragraph shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

c. Whenever any person shall have been convicted in another state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, in a court of competent jurisdiction, of a crime which in said other jurisdiction or country is comparable to one of the crimes enumerated in subsection a. or b. of this section, then that person shall be subject to the provisions of this section.

4. N.J.S.2C:58-3 is amended to read as follows:

Purchase of firearms.

2C:58-3. Purchase of Firearms.

a. Permit to purchase a handgun. No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase, or otherwise acquire a handgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a handgun as provided by this section.

b. Firearms purchaser identification card. No person shall sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire an antique cannon or a rifle or shotgun, other than an antique rifle or shotgun, unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first exhibits said card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the superintendent, which shall indicate that he presently complies with the requirements of subsection c. of this section and shall contain his name, address and firearms purchaser identification card number or dealer's registration number. The said certification shall be retained by the seller, as provided in section 2C:58-2a., or, in the case of a person who is not a dealer, it may be filed with the chief of police of the municipality in which he resides or with the superintendent.

c. Who may obtain. No person of good character and good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. No handgun purchase permit or firearms purchaser identification card shall be issued:

(1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in section 3 of P.L.1991,c.261(C.2C:25-19), whether or not armed with or possessing a weapon at the time of such offense;

(2) To any drug dependent person as defined in section 2 of P.L.1970, c.226 (C.24:21-2), to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently an habitual drunkard;

(3) To any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;

(4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare;

(6) To any person who is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.) prohibiting the person from possessing any firearm;

(7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in subsection d. of section 2 of P.L.1997, c.117 (C:2C:43-7.2); or

(8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.) and whose firearm has not been returned.

d. Issuance. The chief of police of an organized full-time police department of the municipality where the applicant resides or the superintendent, in all other cases, shall upon application, issue to any person qualified under

the provisions of subsection c. of this section a permit to purchase a handgun or a firearms purchaser identification card.

Any person aggrieved by the denial of a permit or identification card may request a hearing in the Superior Court of the county in which he resides if he is a resident of New Jersey or in the Superior Court of the county in which his application was filed if he is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for a permit or identification card. The applicant shall serve a copy of his request for a hearing upon the chief of police of the municipality in which he resides, if he is a resident of New Jersey, and upon the superintendent in all cases. The hearing shall be held and a record made thereof within 30 days of the receipt of the application for such hearing by the judge of the Superior Court. No formal pleading and no filing fee shall be required as a preliminary to such hearing. Appeals from the results of such hearing shall be in accordance with law.

e. Applications. Applications for permits to purchase a handgun and for firearms purchaser identification cards shall be in the form prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description, including distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether he is an alcoholic, habitual drunkard, drug dependent person as defined in section 2 of P.L.1970, c.226 (C.24:21-2), whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition, giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence, whether he presently or ever has been a member of any organization which advocates or approves the commission of acts of force and violence to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey, whether he has ever been convicted of a crime or disorderly persons offense, whether the person is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et. seq.) prohibiting the person from possessing any firearm, and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. For the purpose of complying with this subsection, the applicant shall waive any statutory or other right of confidentiality relating to institutional confinement. The application shall

be signed by the applicant and shall contain as references the names and addresses of two reputable citizens personally acquainted with him.

Application blanks shall be obtainable from the superintendent, from any other officer authorized to grant such permit or identification card, and from licensed retail dealers.

The chief police officer or the superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the municipality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a handgun purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a handgun purchase permit from the same licensing authority for which he was previously fingerprinted, and who provides other reasonably satisfactory proof of his identity, need not be fingerprinted again; however, the chief police officer or the superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this chapter.

f. Granting of permit or identification card; fee; term; renewal; revocation. The application for the permit to purchase a handgun together with a fee of \$2.00, or the application for the firearms purchaser identification card together with a fee of \$5.00, shall be delivered or forwarded to the licensing authority who shall investigate the same and, unless good cause for the denial thereof appears, shall grant the permit or the identification card, or both, if application has been made therefor, within 30 days from the date of receipt of the application for residents of this State and within 45 days for nonresident applicants. A permit to purchase a handgun shall be valid for a period of 90 days from the date of issuance and may be renewed by the issuing authority for good cause for an additional 90 days. A firearms purchaser identification card shall be valid until such time as the holder becomes subject to any of the disabilities set forth in subsection c. of this section, whereupon the card shall be void and shall be returned within five days by the holder to the superintendent, who shall then advise the licensing authority. Failure of the holder to return the firearms purchaser identification card to the superintendent within the said five days shall be an offense under section 2C:39-10a. Any firearms purchaser identification card may be revoked by the Superior Court of the county wherein the card was issued, after hearing upon notice, upon a finding that the holder thereof no longer qualifies for the issuance of such permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such court at any time for the revocation of such card.

There shall be no conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of

a permit or identification card, other than those that are specifically set forth in this chapter.

g. Disposition of fees. All fees for permits shall be paid to the State Treasury if the permit is issued by the superintendent, to the municipality if issued by the chief of police, and to the county treasurer if issued by the judge of the Superior Court.

h. Form of permit; quadruplicate; disposition of copies. The permit shall be in the form prescribed by the superintendent and shall be issued to the applicant in quadruplicate. Prior to the time he receives the handgun from the seller, the applicant shall deliver to the seller the permit in quadruplicate and the seller shall complete all of the information required on the form. Within five days of the date of the sale, the seller shall forward the original copy to the superintendent and the second copy to the chief of police of the municipality in which the purchaser resides, except that in a municipality having no chief of police, such copy shall be forwarded to the superintendent. The third copy shall then be returned to the purchaser with the pistol or revolver and the fourth copy shall be kept by the seller as a permanent record.

i. Restriction on number of firearms person may purchase. Only one handgun shall be purchased or delivered on each permit, but a person shall not be restricted as to the number of rifles or shotguns he may purchase, provided he possesses a valid firearms purchaser identification card and provided further that he signs the certification required in subsection b. of this section for each transaction.

j. Firearms passing to heirs or legatees. Notwithstanding any other provision of this section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to his heir or legatee, whether the same be by testamentary bequest or by the laws of intestacy. The person who shall so receive, or acquire said firearm shall, however, be subject to all other provisions of this chapter. If the heir or legatee of such firearm does not qualify to possess or carry it, he may retain ownership of the firearm for the purpose of sale for a period not exceeding 180 days, or for such further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the superintendent, provided that such firearm is in the custody of the chief law enforcement officer of the municipality or the superintendent during such period.

k. Sawed-off shotguns. Nothing in this section shall be construed to authorize the purchase or possession of any sawed-off shotgun.

l. Nothing in this section and in N.J.S.2C:58-2 shall apply to the sale or purchase of a visual distress signalling device approved by the United States Coast Guard, solely for possession on a private or commercial aircraft or any

boat; provided, however, that no person under the age of 18 years shall purchase nor shall any person sell to a person under the age of 18 years such a visual distress signalling device.

5. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to read as follows:

C.2C:25-28 Filing complaint alleging domestic violence in Family Part; proceedings.

12. a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

d. Summons and complaint forms shall be readily available at the clerk's office, at the municipal courts and at municipal and State police stations.

e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.

f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte

order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.

g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.

h. A judge may issue a temporary restraining order upon sworn testimony or complaint of an applicant who is not physically present, pursuant to court rules, or by a person who represents a person who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

i. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Family Part issues a further order. Any temporary order hereunder is immediately appealable for a plenary hearing de novo not on the record before any judge of the Family Part of the county in which the plaintiff resides or is sheltered if that judge issued the temporary order or has access to the reasons for the issuance of the temporary order and sets forth in the record the reasons for the modification or dissolution. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refileing a complaint in the Family Part based on the same incident and receiving an emergency, ex parte hearing de novo not on the record before a Family Part judge, and every denial of relief by a municipal court judge shall so state.

j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order. The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

k. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but shall, in

the order granting relief, restrict the time and duration of such permission and provide for police supervision of such visit.

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

m. (Deleted by amendment, P.L. 1994, c.94.)

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

o. (Deleted by amendment, P.L. 1994, c.94.)

p. Any temporary or permanent restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

q. Prior to the issuance of any temporary or permanent restraining order issued pursuant to this section, the court shall order that a search be made of the domestic violence central registry with regard to the defendant's record.

C.2C:25-21.1 Rules, regulations concerning weapons prohibitions and domestic violence.

6. The Attorney General may adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary and appropriate to implement this act.

7. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 278

AN ACT prohibiting the imposition by water utilities of standby fees or charges for certain fire protection systems, and amending various parts of the statutory law.

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

1. Section 21 of P.L.1957, c.183 (C.40:14B-21) is amended to read as follows:

C.40:14B-21 Water service charges.

21. a. Every municipal authority is hereby authorized to charge and collect rents, rates, fees or other charges (in this act sometimes referred to as "water service charges") for direct or indirect connection with, or the use, products or services of, the water system, or for sale of water or water services, facilities or products. Such water service charges may be charged to and collected from any person contracting for such connection or use, products or services or for such sale or from the owner or occupant, or both of them, of any real property which directly or indirectly is or has been connected with the water system or to which directly or indirectly has been supplied or furnished such use, products or services of the water system or water or water supply services, water supply facilities or products, and the owner of any such real property shall be liable for and shall pay such water service charges to the municipal authority at the time when and place where such water service charges are due and payable. Such rents, rates, fees and charges shall as nearly as the municipal authority shall deem practicable and equitable be uniform throughout the district for the same type, class and amount of use, products or services of the water system, except as permitted by section 1 of P.L.1992, c.215 (C.40:14B-22.2), and may be based or computed either on the consumption of water on or in connection with the real property, or on the number and kind of water outlets on or in connection with the real property, or on the number and kind of plumbing fixtures or facilities on or in connection with the real property, or on the number of persons residing or working on or otherwise connected or identified with the real property, or on the capacity of the improvements on or connected with the real property, or on any other factors determining the type, class and amount of use, products or services of the water system supplied or furnished, or on any combination of such factors, and may give weight to the characteristics of the water or water services, facilities or products and, as to service outside the district, any other matter affecting the cost of supplying or furnishing the same, including the cost of installation of necessary physical properties.

Every municipal authority that furnishes water supply services or operates water supply facilities shall establish a rate structure that provides for uniform water service charges for water supply service and fire protection systems.

No municipal authority may impose standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter.

Nothing in this section shall preclude a municipal authority from requiring separate dedicated service lines for fire protection. A municipal authority

may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

b. In addition to any such water service charges, a separate charge in the nature of a connection fee or tapping fee, in respect of each connection of any property with the water system, may be imposed upon the owner or occupant of the property so connected. Such connection charges shall be uniform within each class of users and the amount thereof shall not exceed the actual cost of the physical connection, if made by the authority, plus an amount computed in the following manner to represent a fair payment toward the cost of the system:

(1) The amount representing all debt service, including but not limited to sinking funds, reserve funds, the principal and interest on bonds, and the amount of any loans and interest thereon, paid by a municipal authority to defray the capital cost of developing the system as of the end of the immediately preceding fiscal year of the authority shall be added to all capital expenditures made by the authority not funded by a bond ordinance or debt for the development of the system as of the end of the immediately preceding fiscal year of the authority.

(2) Any gifts, contributions or subsidies to the authority received from, and not reimbursed or reimbursable to any federal, State, county or municipal government or agency or any private person, and that portion of amounts paid to the authority by a public entity under a service agreement or service contract which is not repaid to the public entity by the authority, shall then be subtracted.

(3) The remainder shall be divided by the total number of service units served by the authority at the end of the immediately preceding fiscal year of the authority, and the results shall then be apportioned to each new connector according to the number of service units attributed to that connector, to produce the connector's contribution to the cost of the system. In attributing service units to each connector, the estimated average daily flow of water for the connector shall be divided by the average daily flow of water to the average single family residence in the authority's district, to produce the number of service units to be attributed.

c. The connection fee shall be recomputed at the end of each fiscal year of the authority, after a public hearing is held in the manner prescribed in section 23 of P.L.1957, c.183 (C.40:14B-23). The revised connection fee may be imposed upon those who subsequently connect in that fiscal year to the system. The combination of such connection fee or tapping fee and the aforesaid water service charges all meet the requirements of section 23 of P.L.1957, c.183 (C.40:14B-23).

d. The foregoing notwithstanding, no municipal authority shall impose any charges or fees in excess of the cost of water actually used for any sprinkler

system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder. Nothing herein shall preclude any municipal authority from charging for the actual cost of water main connection.

2. R.S.40:62-104 is amended to read as follows:

Supervision, operation and maintenance; collection of charges; contracts.

40:62-104. Any contract entered into pursuant to sections 40:62-96 to 40:62-105 of this title may provide for supervision, operation and maintenance of the water system and the distribution, public or private, by either party to the contract, and may further provide for the collection by either party of rates, rental or other service charges for the supplying of water to the users thereof.

The governing body of a municipality that has established a water district and which operates a water system shall establish a rate structure that provides for uniform rates, rentals, or other service charges for water supply service and fire protection systems.

No municipality wherein a water district is situated may impose standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter.

Nothing in this section shall preclude a municipality wherein a water district is situated from requiring separate dedicated service lines for fire protection. A municipality wherein a water district is situated may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

3. R.S.40:62-107.6 is amended to read as follows:

Operation of system; rates, rents, etc.

40:62-107.6. a. After any municipality shall have purchased a water distribution system pursuant to sections 40:62-107.4 and 40:62-107.5 of this title, the governing body of the municipality shall be authorized to operate the water distribution system as nearly as may be as a part of its own system, and any schedule of rates, rents, charges and penalties which the governing body shall thereafter fix shall be applicable to water users within both municipalities, and in the collection of all rates, rents, charges and penalties the municipality shall have all the rights and remedies that may apply to private water companies supplying water to municipalities of this State.

b. The governing body of a municipality that has purchased a water distribution system shall establish a rate structure that provides for uniform

rates, rentals, or other service charges for water supply service and fire protection systems.

The governing body shall not impose standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter.

Nothing in this section shall preclude the governing body of a municipality that has purchased a water distribution system from requiring separate dedicated service lines for fire protection. The governing body of a municipality that has purchased a water distribution system may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

4. R.S.40:62-127 is amended to read as follows:

Water rates and regulations.

40:62-127. a. The water commission may prescribe and change from time to time rates to be charged for water supplied by the waterworks so acquired, and by any extension or enlargement thereof, but rates for the same kind or class of service shall be uniform in all the municipalities supplied by the waterworks.

The water commission shall establish a rate structure that provides for uniform water service charges for municipal water supply service and fire protection systems.

No rates shall include the imposition of standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter.

Nothing in this section shall preclude a water commission from requiring separate dedicated service lines for fire protection. The water commission may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

No rates shall include the imposition of any fees in excess of the cost of water actually used for any sprinkler system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder.

Nothing herein shall preclude any commission from charging for the actual cost of water main connection.

b. The supplying of water to locations beyond the boundaries of the municipalities owning the waterworks shall be basis for separate classification

of service to permit reasonable differentiation of rates. As soon as practicable after acquiring the waterworks, rates shall be prescribed, and shall be revised from time to time whenever necessary, so that the waterworks shall be self-supporting, the earnings to be sufficient to provide for all expenses of operation and maintenance and such charges as interest, sinking fund and amortization, so as to prevent any deficit to be paid by taxation from accruing. The interest, sinking fund and amortization shall be construed to include:

(1) All service on debt heretofore or hereafter incurred by the commission or by any municipality represented by the commission in connection with the acquisition of such privately-owned waterworks, and any extensions thereto and enlargements thereof, heretofore or hereafter formally assumed by the commission or its successors, and

(2) All service on debt heretofore or hereafter incurred by the commission or by a municipality represented by the commission, or its successors, and heretofore or hereafter formally assumed by the commission, or its successors, as part of any agreement with the municipality relative to the acquisition, by the commission, or its successors, of the ownership of or the management and control of or the right to use any water supply or part thereof or interest therein or any distribution system of water mains and connections, or any part thereof, which any such municipality may own or control.

c. The provisions of this section shall be deemed a contract with the holders of all obligations which shall be or may have been issued for the purpose of financing such acquisitions or which heretofore have been or may hereafter be issued to refund temporary bonds or obligations issued for such purposes, the payment of any of which obligations, and interest thereon, the commission, or its successors, has heretofore or may hereafter formally assume as aforesaid.

d. The commission and any succeeding commission may prescribe, and alter and enforce all reasonable rules and regulations for the maintenance and operation of the waterworks and the collection of rates.

5. R.S.40:62-139 is amended to read as follows:

Furnishing water for special purposes.

40:62-139. a. The water commission may enter into a contract with any person to supply the person with water for fire protection; manufacturing and irrigation and other special purposes, at rates or charges and upon conditions to be designated by the commission. No rates or charges shall include the imposition of standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter. Thereupon the person shall pay to the commission the rate and all other charges stipulated therein, instead of the usual rates charged to other customers of the commission.

b. No rates or charges shall include the imposition of any fees in excess of the cost of water actually used for any sprinkler system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder.

c. Nothing herein contained shall preclude the water commission from charging for the actual cost of water main connection.

d. Nothing herein contained shall alter or affect the lien hereinafter imposed for unpaid water rents or rates, nor change the rights of the commission to collect unpaid water rates or rents in accordance with the provisions hereof.

e. Nothing in this section shall preclude a water commission from requiring separate dedicated service lines for fire protection. The water commission may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

6. Section 1 of P.L.1949, c.194 (C.40:62-151) is amended to read as follows:

C.40:62-151 Annual standby or ready-to-serve charge upon unoccupied lots.

1. The governing body of any municipality or any water commission representing two or more municipalities may fix an annual standby or ready-to-serve service charge upon any unoccupied lot abutting upon a street wherein a water main has been laid and to which the lot may connect.

No service charge shall be made for any lot fronting on a water main which has heretofore been assessed as a local improvement or for which the owners of the lot paid under a contract with the municipality.

No service charge shall include the imposition of standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter.

The service charge shall be rendered and collected in the same manner as other bills for water service are rendered and collected.

Nothing in this section shall preclude the governing body of a municipality or a water commission representing two or more municipalities from requiring separate dedicated service lines for fire protection. The municipal governing body or water commission may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

7. N.J.S.40A:31-10 is amended to read as follows:

Rates, rentals, and other charges for water supply services.

40A:31-10. a. After the commencement of operation of water supply facilities, the local unit or units may prescribe and, from time to time, alter rates or rentals to be charged to users of water supply services. Rates or rentals being in the nature of use or service charges or annual rental charges, shall be uniform and equitable for the same type and class of use or service of the facilities, except as permitted by section 7 of P.L.1994, c.78 (C.40A:31-10.1). Rates or rentals and types and classes of use and service may be based on any factors which the governing body or bodies of that local unit or units shall deem proper and equitable within the region served.

b. Every local unit operating a municipal water supply facility shall establish a rate structure that provides for uniform rates, rentals, or other charges for water supply service and fire protection systems.

No local unit may impose standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter.

c. In fixing rates, rental and other charges for supplying water services, the local unit or units shall establish a rate structure that allows, within the limits of any lawful covenants made with bondholders, the local unit to:

(1) Recover all costs of acquisition, construction or operation, including the costs of raw materials, administration, real or personal property, maintenance, taxes, debt service charges, fees and an amount equal to any operating budget deficit occurring in the immediately preceding fiscal year;

(2) Establish a surplus in an amount sufficient to provide for the reasonable anticipation of any contingency that may affect the operation of the utility, and, at the discretion of the local unit or units, allow for the transfer of moneys from the budget for the water supply facilities to the local budget in accordance with section 5 of P.L.1983, c.111 (C.40A:4-35.1).

d. No local unit or units shall impose any rates or rentals in excess of the cost of water actually used for any sprinkler system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder.

e. Nothing in this section shall preclude a local unit operating a municipal water supply facility from requiring separate dedicated service lines for fire protection. The local unit may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

8. R.S.48:19-18 is amended to read as follows:

Sale of water, rates.

48:19-18. Each water company organized under the laws of this State may sell and dispose of the water issuing from its reservoirs, aqueducts or pipes for such rates and pursuant to such terms and conditions as are in accordance with its approved tariffs on file with the Board of Public Utilities, provided, however, as follows:

No tariff shall be approved that provides for or allows the imposition of any standby fees or charges for any fire protection system to a residential customer served by a water service line of two inches or less in diameter. No tariff shall be approved that provides for or allows the imposition of any fees in excess of the cost of water actually used for any sprinkler system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder. Nothing herein shall preclude any water company from charging for the actual cost of water main connection.

Nothing in this section shall preclude a water company from requiring separate dedicated service lines for fire protection. The water company may require that fire service lines be metered. Nothing in this section shall alter the liability for maintenance and repair of service lines which exists on the effective date of P.L.2003, c.278.

9. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 279

AN ACT concerning wine tastings and samplings by certain plenary retail consumption and distribution licensees and amending R.S.33:1-12.

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

1. R.S.33:1-12 is amended to read as follows:

Class C licenses; classifications; fees.

33:1-12. Class C licenses shall be subdivided and classified as follows:

Plenary retail consumption license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen; drug store or other mercantile business is carried on, except as hereinafter provided. The holder of this license shall be permitted to conduct consumer wine, beer and spirits tastings and samplings for a fee or on a complimentary basis pursuant to conditions established by rules and regulations of the Division of Alcoholic Beverage Control. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale, at an entertainment facility as defined in R.S.33:1-1, having a seating capacity for no less than 4,000 patrons, of mercantile items traditionally associated with the type of event or program held at the site; the sale of distillers', brewers' and vintners' packaged merchandise prepacked as a unit with other suitable objects as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages; or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$250 and not more than \$2,500. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or \$500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail consumption license shall be granted within its respective municipality.

The holder of this license shall be permitted to obtain a restricted brewery license issued pursuant to subsection 1c. of R.S.33:1-10 and to operate a restricted brewery immediately adjoining the licensed premises in accordance with the restrictions set forth in that subsection. All fees related to the issuance of both licenses shall be paid in accordance with statutory law.

Seasonal retail consumption license. 2. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle,

and also to sell any alcoholic beverages in original containers for consumption off the licensed premises, during the summer season from May 1 until November 14, inclusive, or during the winter season from November 15 until April 30, inclusive; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business is carried on, except as hereinafter provided. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale of distillers', brewers' and vintners' packaged merchandise prepacked as a unit with other suitable objects as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons; or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at 75% of the fee fixed by said board or body for plenary retail consumption licenses. The governing board or body of each municipality may, by ordinance, enact that no seasonal retail consumption license shall be granted within its respective municipality.

Plenary retail distribution license. 3. a. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers; except that licensees shall be permitted to conduct consumer wine tastings and samplings on a complimentary basis pursuant to conditions established by rules and regulations of the Division of Alcoholic Beverage Control, provided, however:

(1) patrons are limited to four one-and-one-half ounce samples in any 24-hour period;

(2) samples are not offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or intoxicated person;

(3) samples are not offered when the sale of alcoholic beverages is otherwise prohibited; and

(4) tastings and samplings are confined to the licensed premises and all wine used in the tastings and samplings shall be owned by the licensee conducting these tastings and samplings.

Notwithstanding the imposition of any other penalty that may be lawfully imposed, a person who violates paragraphs (1) through (4) of this subsection shall be fined an amount to be established by the division.

The governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, except that any such ordinance, heretofore or hereafter adopted, shall not prohibit the retail sale of distillers', brewers' and vintners' packaged merchandise prepacked as a unit with other suitable objects as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this act; cigars, cigarettes, packaged crackers, chips, nuts and similar snacks, ice, and nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$125 and not more than \$2,500. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or \$500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality.

Limited retail distribution license. 3. b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than 72 fluid ounces for consumption off the licensed premises, but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto. The fee for this license shall be fixed by the governing body or board of the municipality in which the licensed premises are situated, by ordinance, at not less than \$31 and not more than \$63. The governing board or body of each municipality may, by ordinance, enact that no limited retail distribution license shall be granted within its respective municipality.

Plenary retail transit license. 4. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages, for consumption only, on railroad trains, airplanes, limousines and boats, while in transit. The fee for this license for use by a railroad or air transport company shall be \$375, for use by the owners of limousines shall be \$31 per vehicle, and for use on a boat shall be \$63 on a boat 65 feet or less in length, \$125 on a boat more than 65 feet in length but not more than 110 feet in length, and \$375 on a boat more than 110 feet in length; such boat lengths shall be determined in the

manner prescribed by the Bureau of Customs of the United States Government or any federal agency successor thereto for boat measurement in connection with issuance of marine documents. A license issued under this provision to a railroad or air transport company shall cover all railroad cars and planes operated by any such company within the State of New Jersey. A license for a boat or limousine issued under this provision shall apply only to the particular boat or limousine for which issued, and shall permit the purchase of alcoholic beverages for sale or service in a boat or limousine to be made from any Class A and B licensee or from any Class C licensee whose license privilege permits the sale of alcoholic beverages in original containers for off-premises consumption. An interest in a plenary retail transit license issued in accordance with this section shall be excluded in determining the maximum number of retail licenses permitted under P.L.1962, c.152 (C.33:1-12.31 et seq.).

Club license. 5. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$63 and not more than \$188. The governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the Director of the Division of Alcoholic Beverage Control by rules and regulations.

The provisions of section 23 of P.L.2003, c.117 amendatory of this section shall apply to licenses issued or transferred on or after July 1, 2003, and to license renewals commencing on or after July 1, 2003.

2. This act shall take effect on the first day of the fifth month after enactment, except that the director may promulgate those rules in advance as shall be necessary for the implementation of this act.

Approved January 14, 2004.

CHAPTER 280

AN ACT regulating and licensing pharmacists and repealing various parts of the statutory law.

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

C.45:14-40 Short title, purpose of act.

1. a. This act shall be known and may be cited as the "New Jersey Pharmacy Practice Act."

b. The practice of pharmacy in this State is declared a health care professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in this State. This act shall be liberally construed to carry out these objectives and purposes.

c. It is the purpose of this act to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy, the licensure of pharmacists and the permitting, control and regulation of all pharmacy practice sites in this State that engage in the practice of pharmacy.

C.45:14-41 Definitions relative to pharmacists.

2. As used in this act:

"Administer" means the direct application of a drug to the body of a patient or research subject by subcutaneous, intramuscular or intradermal injection, inhalation or ingestion by a pharmacist engaged in collaborative practice or in accordance with regulations jointly promulgated by the board and the State Board of Medical Examiners.

"Automated medication device" means a discrete unit that performs specific drug dispensing operations.

"Automated medication system" means any process that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing and distribution of medications and which collects, controls and maintains all transaction information.

"Board of Pharmacy" or "board" means the New Jersey State Board of Pharmacy.

"Certification" means a certification awarded by a recognized non-government specialty organization to signify that a pharmacist has met predetermined qualifications and to signify to the public that the pharmacist is competent to practice in the designated specialty.

"Collaborative drug therapy management" means a written protocol directed on a voluntary basis by a patient's physician, with the patient's consent, that is between a patient's physician who is treating the patient for a specific disease and a pharmacist for cooperative management of a patient's drug, biological and device-related health care needs, which shall be conducted in accordance

with regulations jointly promulgated by the board and the State Board of Medical Examiners and shall only include the collecting, analyzing and monitoring of patient data; ordering or performing of laboratory tests based on the standing orders of a physician as set forth in the written protocol; ordering of clinical tests based on the standing orders of a physician as set forth in the written protocol, provided those laboratory tests are granted waived status in accordance with the provisions of the "New Jersey Clinical Laboratory Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.) and are for the treatment of a disease state identified jointly by the board and the State Board of Medical Examiners as subject to collaborative drug therapy management; modifying, continuing or discontinuing drug or device therapy; and therapeutic drug monitoring with appropriate modification to dose, dosage regimen, dosage forms or route of administration. The interpretation of clinical or laboratory tests under a written protocol may only be performed by a pharmacist in direct consultation with a physician.

"Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug or device as the result of a practitioner's prescription or initiative based on the relationship of the practitioner or patient with the pharmacist in the course of professional practice or for the purpose of, or incident to, research, teaching or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns. Nothing in this act is meant to limit a prescriber's ability under pre-existing law to order a compounded medication for use in the prescriber's practice, as permitted by State and federal law.

"Confidential information" means information that is identifiable as to the patient involved that a pharmacist accesses, transmits or maintains in a patient's record or which is communicated to or by the patient as part of patient counseling.

"Credentialing" means the process by which an approved academic institution awards a certificate to signify that the credentialed pharmacist has completed the required courses, examinations or both, that indicate advanced knowledge of a particular area of pharmacy.

"Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for consideration.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label "RX Only."

"Dispense" or "dispensing" means the procedure entailing the interpretation of a practitioner's prescription order for a drug, biological or device, and pursuant to that order the proper selection, measuring, compounding, labeling and

packaging in a proper container for subsequent administration to, or use by, a patient.

"Dosage form" means the physical formulation or medium in which the product is intended, manufactured and made available for use, including, but not limited to: tablets, capsules, oral solutions, aerosols, inhalers, gels, lotions, creams, ointments, transdermals and suppositories, and the particular form of the above which utilizes a specific technology or mechanism to control, enhance or direct the release, targeting, systemic absorption or other delivery of a dosage regimen in the body.

"Drug or medication" means articles recognized as drugs in any official compendium, or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; articles intended to affect the structure or any function of the body of humans or other animals, except that a food, dietary ingredient or dietary supplement, as those terms are defined in 21 U.S.C.s.321, is not a drug solely because the label or the labeling contains such a claim; and articles intended for use as a component of and articles specified in this definition of "drug or medication."

"Drug utilization review" includes, but is not limited to, the following activities:

(1) Evaluation of prescription drug orders and patient records for known allergies, rational therapy-contraindications, appropriate dose and route of administration and appropriate directions for use;

(2) Evaluation of prescription drug orders and patient records for duplication of therapy;

(3) Evaluation of prescription drug orders and patient records for interactions between drug-drug, drug-food, drug-disease and adverse drug reactions; and

(4) Evaluation of prescription drug orders and patient records for proper utilization, including over- or under-utilization, and optimum therapeutic outcomes.

"Extern" means any person who is in the fifth or sixth year of college or the third or fourth professional year, at an accredited school or college of pharmacy approved by the board, who is assigned to a training site for the purpose of acquiring accredited practical experience under the supervision of the school or college at which the person is enrolled.

"Electronic means" means any electronic or digital transmission format, including facsimile or computer generated messaging.

"Immediate supervision" means a level of control which assures that the pharmacist is physically present at the pharmacy practice site and has the

responsibility for accuracy and safety with respect to the actions of pharmacy technicians, interns and externs.

"Intern" means any person who has graduated from an accredited school or college of pharmacy approved by the board, or if a foreign pharmacy graduate, any person who has met all of the requirements of the board, and who is being trained by an approved preceptor for the purpose of acquiring accredited practical experience and who has first registered for that purpose with the board.

"Labeling" means the process of preparing and affixing a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a non-prescription drug or commercially packaged legend drug or device.

"Licensure" means the process by which the board grants permission to an individual to engage in the practice of pharmacy upon finding that the applicant has attained the degree of competency necessary to ensure that the public health, safety and welfare will be protected.

"Medication error" means a preventable event that may cause or lead to inappropriate use of a medication or patient harm while the medication is in the control of the practitioner, patient or consumer.

"Medication order" means a prescription for a specific patient in an institutional setting.

"Modifying" means to change a specific drug, the dosage, or route of delivery of a drug currently being administered for an existing diagnosis pursuant to a collaborative drug therapy management.

"Non-prescription drug or device" means a drug or device which may be obtained without a prescription and which is labeled for consumer use in accordance with the requirements of the laws and rules of this State and the federal government.

"Permit" means the authorization granted by the board to a site to engage in the practice of pharmacy.

"Person" means an individual, corporation, partnership, association or any other legal entity including government.

"Pharmaceutical care" means the provision by a pharmacist of drug therapy review and other related patient care services intended to achieve positive outcomes related to the treatment, cure or prevention of a disease; control, elimination or reduction of a patient's symptoms; or arresting or slowing of a disease process as defined by the rules and regulations of the board.

"Pharmacist" means an individual currently licensed by this State to engage in the practice of pharmacy.

"Pharmacist-in-charge" means a pharmacist who accepts responsibility for the operation of a pharmacy practice site in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs.

"Pharmacist in collaborative practice" means a pharmacist engaged in the collaborative drug therapy management of a patient's drug, biological and device-related health care needs pursuant to a written protocol, in collaboration with a licensed physician and in accordance with the regulations jointly promulgated by the board and the State Board of Medical Examiners.

"Pharmacy practice site" means any place in this State where drugs are dispensed or pharmaceutical care is provided by a licensed pharmacist, but shall not include a medical office under the control of a licensed physician.

"Pharmacy technician" means an individual working in a pharmacy practice site who, under the immediate supervision of a pharmacist, assists in pharmacy activities as permitted by section 41 of this act and the rules and regulations of the board that do not require the professional judgment of a pharmacist.

"Practice of pharmacy" means a health care service by a pharmacist that includes: compounding, dispensing and labeling of drugs, biologicals, radio pharmaceuticals or devices; overseeing automated medication systems; interpreting and evaluating prescriptions; administering and distributing drugs, biologicals and devices; maintaining prescription drug records; advising and consulting on the therapeutic values, content, hazards and uses of drugs, biologicals and devices; managing and monitoring drug therapy; collecting, analyzing and monitoring patient data; performing drug utilization reviews; storing prescription drugs and devices; supervising technicians, interns and externs; and such other acts, services, operations or transactions necessary, or incidental to, providing pharmaceutical care and education. In accordance with written guidelines or protocols established with a licensed physician, the "practice of pharmacy" also includes collaborative drug therapy management including modifying, continuing or discontinuing drug or device therapy; ordering or performing of laboratory tests under collaborative drug therapy management; and ordering clinical tests, excluding laboratory tests, unless those tests are part of collaborative drug therapy management.

"Practitioner" means an individual currently licensed, registered or otherwise authorized by the jurisdiction in which the individual practices to administer or prescribe drugs in the course of professional practice.

"Preceptor" means an individual who is a pharmacist, meets the qualifications under the rules and regulations of the board, and participates in the instructional training of pharmacy interns and externs.

"Prescription" means a lawful order of a practitioner for a drug, a device or diagnostic agent for a specific patient.

"Prescription drug" or "legend drug" means a drug which, under federal law, is required to be labeled prior to being delivered to the pharmacist, with either of the following statements: "Rx Only" or "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian" or is required

by any applicable federal or state law, rule or regulation to be dispensed pursuant to a prescription drug order or is restricted to use by a practitioner only.

"Registration" means the process of making a list or being enrolled in an existing list.

"Therapeutic interchange" means the substitution and dispensing of a drug chemically dissimilar from the prescription drug originally prescribed.

C.45:14-42 Powers, duties, authority of board.

3. The board shall enforce the provisions of this act. The board shall have all of the duties, powers and authority specifically granted by or necessary for the enforcement of this act, as well as such other duties, powers and authority as it may be granted from time to time by applicable law.

C.45:14-43 Board membership, terms, vacancies.

4. a. The board shall consist of eleven members, two of whom shall be public members and one of whom shall be a State executive department member appointed pursuant to the provisions of P.L. 1971, c.60 (C.45:1-2.1 et seq.). Each of the remaining eight members shall be pharmacists. Each pharmacist member shall have at least five years of experience in the practice of pharmacy in this State after licensure, and shall at the time of appointment and throughout their tenure: be currently licensed and in good standing to engage in the practice of pharmacy in this State, and be actively engaged in the practice of pharmacy in this State.

b. The Governor shall appoint the members of the board. Every State professional pharmacy association may send to the Governor the names of pharmacists having the qualifications required by this section, whom the Governor may appoint to fill any vacancy occurring in the board. In appointing members to the board to fill vacancies of members who engage in the practice of pharmacy, the Governor shall appoint members so that the membership of the board includes, at all times, at least one pharmacist employed by a chain drug retailer who owns or operates seven or more pharmacy practice sites, one pharmacist who is employed by a health care system and one pharmacist who owns a pharmacy practice site in this State.

c. Except for the members first appointed, members of the board shall be appointed for a term of five years, except that members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of that term. The terms of the members of the board shall be staggered, so that the terms of no more than three members shall expire in any year. Each member shall serve until a successor is appointed and qualified. The present members of the board appointed pursuant to R.S.45:14-1 et seq. shall serve the balance of their terms. Any present board member appointed initially for a term of less than five years shall be eligible to serve for two additional full terms. No member of the board

shall serve more than two consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this subsection.

d. The Governor may remove a member of the board after a hearing for misconduct, incompetency, neglect of duty or for any other sufficient cause.

C.45:14-44 Election of officers; executive director.

5. a. The board shall annually elect from among its members a president and vice-president.

b. The position of executive director shall be held by a pharmacist licensed in the State of New Jersey. The executive director shall be responsible for the performance of the administrative functions of the board and those other duties that the board may direct.

C.45:14-45 Compensation.

6. Each member of the board shall receive compensation pursuant to section 2 of P.L.1977, c.285 (C.45:1-2.5) of \$150 per day for each day on which the member is engaged in performance of the official duties of the board, and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of those official duties.

C.45:14-46 Board meetings.

7. The board shall meet at least once every month to transact its business. The board shall meet at those additional times that it may determine. Additional meetings may be called by the president of the board or by two-thirds of the members of the board.

C.45:14-47 Rules, regulations; joint rules.

8. The board shall make, adopt, amend and repeal those rules and regulations necessary for the proper administration and enforcement of this act. Those rules and regulations shall be promulgated in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Rules pertaining to collaborative drug therapy management and administration of drugs by pharmacists shall be jointly promulgated by the board and the State Board of Medical Examiners.

C.45:14-48 Responsibilities of board.

9. a. The board shall be responsible for the control and regulation of the practice of pharmacy in this State including, but not limited to, the following:

(1) The licensing by examination or by license transfer of applicants who are qualified to engage in the practice of pharmacy under the provisions of this act;

(2) The renewal of licenses to engage in the practice of pharmacy;

- (3) The establishment and enforcement of professional standards and rules of conduct of pharmacists engaged in the practice of pharmacy;
- (4) The establishment of requirements for pharmacists to engage in collaborative practice;
- (5) The establishment of requirements jointly promulgated with the State Board of Medical Examiners for pharmacists to administer drugs directly to patients;
- (6) The enforcement of those provisions of this act relating to the conduct or competence of pharmacists practicing in this State, and the suspension, revocation, failure to renew or restriction of licenses to engage in the practice of pharmacy pursuant to the provisions of P.L. 1978, c. 73 (C.45:1-14 et seq.);
- (7) The regulation of pharmacy practiced through any technological means;
- (8) The regulation and control of automated medication systems and automated medication devices within or outside of pharmacy practice sites;
- (9) The right to seize any drugs and devices found by the board to constitute an imminent danger to the public health and welfare;
- (10) The establishment of minimum specifications for record keeping, prescription and patient profile record maintenance, pharmacy practice sites including, but not limited to, the physical premises, technical equipment, environment, supplies, personnel and procedures for the storage, compounding and dispensing of drugs or devices, and for the monitoring of drug therapy;
- (11) The inspection of any pharmacy practice site at all reasonable hours for the purpose of determining if any provisions of the laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board, its officers, inspectors and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other states relating to drugs, devices and the practice of pharmacy;
- (12) The inspection of prescription files and the prescription records of a pharmacy and the removal from the files and taking possession of any original prescription, providing that the authorized agent removing or taking possession of an original prescription shall place in the file from which it was removed a copy certified by that person to be a true copy of the original prescription removed; provided further, that the original copy shall be returned by the board to the file from which it was removed after it has served the purpose for which it was removed;
- (13) The establishment of requirements for patient counseling, patient profiles and drug utilization reviews;
- (14) The establishment of regulations to protect the health and safety of pharmacy patients; and

(15) The prescribing or changing of the fees for examinations, certifications, licensures, renewals and other services performed pursuant to P.L. 1974, c.46 (C.45:1-3.1 et seq.) and this act.

b. The board shall have those other duties, powers and authority as may be necessary to the enforcement of this act and to the enforcement of rules and regulations of the board, which may include, but not be limited to, the following:

(1) The determination and issuance of standards, recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this State, and the specifications and enforcement of requirements for practical training, including internships;

(2) The registration of externs, interns, pharmacy preceptors and pharmacy technicians;

(3) The regulation of the training, qualifications and conduct of applicants, externs, interns, pharmacy preceptors and pharmacy technicians;

(4) The collection of professional demographic data;

(5) The joining with those professional organizations and associations organized to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public or whose activities assist and facilitate the work of the board;

(6) The establishment of a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care;

(7) The engagement in activities to educate consumers, to assist them in obtaining information necessary to make decisions about medication issues;

(8) The establishment of standards for the continuing education of registered pharmacists;

(9) The establishment of rules and regulations for extraordinary emergency situations that interfere with the ability to practice under the current rules and regulations;

(10) The establishment of guidelines for board approved pilot programs. The guidelines shall be complied with to implement a program that may not be presently acknowledged in this act or its rules or regulations; and

(11) The assurance that any credentialing or certification of a pharmacist is not misleading to the public.

c. (1) The board may place under seal all drugs, biologicals, radio pharmaceuticals or devices that are owned by or in the possession, custody or control of a licensee or permit holder at the time his license or permit is suspended or revoked or at the time the board refused to renew his license. Except as otherwise provided in this section, drugs, biologicals, radio pharmaceuticals or devices that are sealed pursuant to this paragraph shall not be disposed of until appeal rights under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) have expired, or an appeal filed

pursuant to that act has been determined. The court, involved in an appeal filed pursuant to the "Administrative Procedure Act," may order the board, during the pendency of the appeal, to sell sealed drugs, biologicals and radio pharmaceuticals that are perishable. The proceeds of a sale shall be deposited with the court.

(2) Notwithstanding any provisions of this act to the contrary, whenever a duly authorized representative of the board finds, or has probable cause to believe, that any drug or device is outdated, adulterated or misbranded within the meaning of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C.s.301 et seq., the representative shall affix to that drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being outdated, adulterated or misbranded, had been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until provision for removing or disposal is given by the board, its agent or the court. No person shall remove or dispose of an embargoed drug or device by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission of the court.

(3) When a drug or device detained or embargoed under paragraph (2) of this subsection c. has been declared by the representative to be outdated, adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the court in which jurisdiction the article is detained or embargoed for an order for condemnation of that article. If the judge determines that this drug or device so detained or embargoed is not adulterated, outdated or misbranded, the board shall direct the immediate removal of the tag or other marking.

(4) If the court finds that a detained or embargoed drug or device is adulterated, outdated or misbranded, that drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expenses shall be borne by the owner of that drug or device. When the outdating, adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after the costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that the drug or device be delivered to the owner thereof for labeling or processing under the supervision of a board representative. Expense of that supervision shall be paid by the owner. The bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

d. Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers and authority in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.45:14-49 Licensure required for pharmacist.

10. a. Except as otherwise provided in this act, it shall be unlawful for any individual to engage in the practice of pharmacy unless currently licensed to practice under the provisions of this act.

b. The provisions of this act shall not apply to the sale of any drug by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, veterinarian or other person licensed to prescribe such drugs in their professional practice.

c. Practitioners authorized under the laws of this State to compound drugs and to dispense drugs directly to their patients in the practice of their respective professions shall meet the standards established by their respective licensing boards with respect to storage, handling, security, counseling, labeling, packing and record keeping requirements for the dispensing of drugs, or if no such standards exist, the same storage, handling, security, counseling, labeling, packaging and record keeping requirements for the dispensing of drugs applicable to pharmacists.

C.45:14-50 Application for license; requirements.

11. To obtain a license to engage in the practice of pharmacy, the applicant shall:

a. Have submitted a written application in the form prescribed by the board;

b. Have attained the age of 18 years;

c. Be of good moral character;

d. Have graduated and received a professional degree from a college or school of pharmacy that has been approved by the board;

e. Have completed an internship or other program that has been approved by the board, or demonstrated to the board's satisfaction experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the board;

f. Have successfully passed an examination or examinations as determined by the board; and

g. Have paid the fees specified by the board for the examination and any related materials, and have paid for the issuance of the license.

C.45:14-51 Examination for licensure.

12. The examination for licensure shall measure the competence of the applicant to engage in the practice of pharmacy. The board may employ, cooperate and contract with any organization or consultant in the preparation and grading of an examination, but shall retain the sole discretion and responsibility for determining which applicants have successfully passed the examination.

C.45:14-52 Practical experience, requirements.

13. a. All applicants for licensure by examination shall obtain practical experience in the practice of pharmacy under terms and conditions determined by the board.

b. The board may establish licensure requirements for interns and standards for internship, or any other experiential program necessary to qualify an applicant for the licensure examination, and shall also determine the qualifications of preceptors used in practical experience programs.

C.45:14-53 Licensure for pharmacist currently licensed in another jurisdiction.

14. a. In order for a pharmacist currently licensed in another jurisdiction to obtain a license as a pharmacist by license transfer in this State, an applicant shall:

(1) Have submitted a written application in the form prescribed by the board;

(2) Have attained the age of 18 years;

(3) Have good moral character;

(4) Have engaged in the practice of pharmacy for a period of at least 1,000 hours within the last two years or have met, immediately prior to application, the internship requirements of this State within the one-year period immediately preceding the date of application;

(5) Have presented to the board proof of initial licensure by examination and proof that the license is in good standing;

(6) Have presented to the board proof that any other license granted to the applicant by any other state has not been suspended, revoked or otherwise restricted for any reason except nonrenewal or for the failure to obtain the required continuing education credits in any state where the applicant is currently licensed but not engaged in the practice of pharmacy;

(7) Have paid the fees specified by the board;

(8) Have graduated and received a professional degree from a college or school of pharmacy approved by the board; and

(9) Have met any other requirements as established by the board by regulation.

b. No applicant shall be eligible for license transfer unless the applicant holds a current valid license in a state that grants licensure transfer to pharmacists duly licensed by examination in this State.

c. In order for a pharmacist applicant with a pharmacy degree from a foreign country or a college of pharmacy not approved by the board to obtain a license as a pharmacist, that applicant shall meet those requirements as established by the board by regulation.

C.45:14-54 Continuing pharmacy education.

15. a. The board shall require each person registered as a pharmacist, as a condition for biennial renewal certification, to complete continuing pharmacy education during each biennial period immediately preceding the date of renewal and submit proof thereof to the board.

b. The board shall:

(1) Establish standards for continuing pharmacy education, including the number of credits, the subject matter and content of courses of study, the selection of instructors and the type of continuing education credits required of a registered pharmacist as a condition of biennial registration;

(2) Approve educational programs offering credit towards continuing pharmacy education requirements; and

(3) Approve other equivalent educational programs, including, but not limited to, home study courses, and establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs. In the case of continuing education courses and programs, each hour of instruction shall be equivalent to one credit.

c. (1) The board shall only approve programs that are provided on a nondiscriminatory basis. The board shall permit any pharmacy association or organization offering a continuing pharmacy education program approved by the board pursuant to subsection b. of this section to impose a reasonable differential in registration fees for courses upon registered pharmacists who are not members of that pharmacy association or organization. The board may approve programs held within or outside the State.

(2) In no event shall the board grant credits for, or approve as, a component of a continuing education program:

(a) participation in a routine business portion of a meeting of a pharmacy association or organization; or

(b) any presentation that is offered to sell a product or promote a business enterprise.

d. (1) The board may, in its discretion, waive requirements for continuing education on an individual basis for reasons of hardship, such as illness or disability, retirement of the registration certificate, or any other good cause.

(2) The board shall not require completion of continuing education credits for an initial renewal of registration.

(3) If a pharmacist completes a number of continuing education credit hours in excess of the number required for a biennial period, the board may allow, by rule or regulation, credits to be carried over to satisfy the pharmacist's continuing education requirement for the next biennial renewal period, but shall not be applicable thereafter.

C.45:14-55 Use of New Jersey Prescription Blanks.

16. a. A practitioner practicing in this State shall use non-reproducible, non-erasable safety paper New Jersey Prescription Blanks bearing that practitioner's license number whenever the practitioner issues prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items. The prescription blanks shall be secured from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety.

b. A licensed practitioner practicing in this State shall maintain a record of the receipt of New Jersey Prescription Blanks. The practitioner shall notify the Office of Drug Control in the Division of Consumer Affairs as soon as possible but no later than 72 hours of being made aware that any New Jersey Prescription Blank in the practitioner's possession has been stolen. Upon receipt of notification, the Office of Drug Control shall take appropriate action, including notification to the Department of Human Services and the Attorney General.

C.45:14-56 Health care facility prescriptions.

17. a. Prescriptions issued by a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall be written on non-reproducible, non-erasable safety paper New Jersey Prescription Blanks. The prescription blanks shall be secured from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety. The New Jersey Prescription Blanks shall bear the unique provider number assigned to that health care facility for the issuing of prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items.

b. A health care facility shall maintain a record of the receipt of New Jersey Prescription Blanks. The health care facility shall notify the Office of Drug Control in the Division of Consumer Affairs as soon as possible but no later than 72 hours of being made aware that any New Jersey Prescription Blank in the facility's possession has been stolen. Upon receipt of notification, the Office of Drug Control shall take appropriate action including notification to the Department of Human Services and the Attorney General.

C.45:14-57 Requirements for prescription to be filled.

18. A prescription issued by a practitioner or health care facility licensed in New Jersey shall not be filled by a pharmacist unless the prescription is issued on a New Jersey Prescription Blank bearing the practitioner's license number or the unique provider number assigned to a health care facility.

C.45:14-58 Transmission of prescription by telephone, electronic means, CDS requirements.

19. a. Nothing contained in this act shall preclude a practitioner from transmitting to a pharmacist by telephone or electronic means a prescription,

as otherwise authorized by law, if that practitioner provides the practitioner's Drug Enforcement Administration registration number and the practitioner's license number, or any other federally identified number, as appropriate, to the pharmacist at the time the practitioner transmits the prescription.

b. Except as may be otherwise permitted by law, no prescription for any Schedule II controlled dangerous substance shall be given or transmitted to pharmacists, in any other manner, than in writing signed by the practitioner giving or transmitting the same, nor shall such prescription be renewed or refilled. The requirement in this subsection that a prescription for any controlled dangerous substance be given or transmitted to pharmacists in writing signed by the practitioner shall not apply to a prescription for a Schedule II drug if that prescription is transmitted or prepared in compliance with federal and State regulations.

C.45:14-59 Format for New Jersey Prescription Blanks.

20. The Division of Consumer Affairs in the Department of Law and Public Safety shall establish the format for uniform, non-reproducible, non-erasable safety paper prescription blanks, to be known as New Jersey Prescription Blanks, which format shall include an identifiable logo or symbol that will appear on all prescription blanks. The division shall approve a sufficient number of vendors to ensure production of an adequate supply of New Jersey Prescription Blanks for practitioners and health care facilities statewide.

C.45:14-60 Different dosage form, conditions.

21. A pharmacist may dispense a prescription in a different dosage form than originally prescribed if the pharmacist notifies the prescriber no later than 48 hours following the dispensing of the prescription, provided the dosage form dispensed has the appropriate drug release rate.

C.45:14-61 Requirements for collaborative practice.

22. In establishing requirements for pharmacists to engage in collaborative practice as provided in paragraph (4) of subsection a. of section 9 of this act, the board shall include in these requirements, but not be limited to, provisions that any written protocol between a physician and pharmacist:

- a. is agreed to by both the physician and the pharmacist with the consent of the patient;
- b. identifies, by name and title, each physician and each pharmacist who is permitted to participate in a patient's collaborative drug therapy management;
- c. specifies the functions and responsibilities the pharmacist will be performing;
- d. is available at the practice sites of the pharmacist and physician and made available at each site to the patient;

- e. is initiated and utilized at the sole discretion of the physician for a specific patient;
- f. may be terminated at any time by either party by written documentation;
- g. establishes when physician notification is required, the physician chart update interval, and an appropriate time frame within which the pharmacist must notify the physician of any change in dose, duration or frequency of medication prescribed;
- h. remains in effect for a period not to exceed two years upon the conclusion of which, or sooner, the parties shall review the protocol and make a determination as to its renewal, modification or termination; and
- i. establish the means by which the patient will be advised of the right to elect to participate in and withdraw from the collaborative drug therapy management.

C.45:14-62 Collaborative drug therapy management.

- 23. a. Each collaborative drug therapy management shall be between a single patient's specific physician and the patient's pharmacist or pharmacy and address that patient's specific condition, disease or diseases.
- b. No collaborative drug therapy management shall include, without the prior consent of the patient and the patient's physician who has signed the protocol, therapeutic interchange at the time of dispensing, provided that written confirmation of this prior consent, which may be by electronic means, shall be obtained pursuant to record keeping guidelines to be established by regulation jointly promulgated by the board and the State Board of Medical Examiners.

C.45:14-63 Administration of prescription medication directly to patient, immunizations.

- 24. a. No pharmacist shall administer a prescription medication directly to a patient without appropriate education or certification, as determined by the board in accordance with the requirements set forth in the rules jointly promulgated by the board and the State Board of Medical Examiners. Such medication shall only be for the treatment of a disease for which a nationally certified program is in effect, or as determined by the board, and only if utilized for the treatment of that disease for which the medication is prescribed or indicated or for which the collaborative drug therapy management permits.
- b. Notwithstanding any law, rule or regulation to the contrary, other than for pediatric immunizations, a pharmacist may administer drugs in immunization programs and programs sponsored by governmental agencies that are not patient specific provided the pharmacist is appropriately educated and qualified, as determined by the board in accordance with the requirements set forth in the rules jointly promulgated by the board and the State Board of Medical Examiners.

C.45:14-64 Inapplicability relative to collaborative drug therapy management in hospitals.

25. The provisions of this act regulating collaborative drug therapy management shall not apply to any pharmacist practicing in a hospital, provided that prescribing within these institutions takes place under the guidance of a pharmacy and therapeutics committee in accordance with procedures as determined by regulations jointly promulgated by the board and the State Board of Medical Examiners.

C.45:14-65 Refusal of application for examination, suspension, revocation of certificate; procedure.

26. In addition to the provisions of section 8 of P.L. 1978, c. 73 (C.45:1-21), the board may refuse an application for examination or may suspend or revoke the certificate of a licensed pharmacist upon proof satisfactory to the board that such licensed pharmacist is guilty of grossly unprofessional conduct and the following acts are hereby declared to constitute grossly unprofessional conduct for the purpose of this act:

a. Paying rebates or entering into an agreement for payment of rebates to any physician, dentist or other person for the recommending of the services of any person.

b. The providing or causing to be provided to a physician, dentist, veterinarian or other person authorized to prescribe, prescription blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

c. The claiming of professional superiority in the compounding or filling of prescriptions or in any manner implying professional superiority which may reduce public confidence in the ability, character or integrity of other pharmacists.

d. Fostering the interest of one group of patients at the expense of another which compromises the quality or extent of professional services or facilities made available.

e. The distribution of premiums or rebates of any kind whatsoever in connection with the sale of drugs and medications provided, however, that trading stamps and similar devices shall not be considered to be rebates for the purposes of this act and provided further that discounts, premiums and rebates may be provided in connection with the sale of drugs and medications to any person who is 60 years of age or older.

f. Advertising of prescription drug prices in a manner inconsistent with rules and regulations promulgated by the Director of the Division of Consumer Affairs, except that no advertising of any drug or substance shall be authorized unless the Commissioner of Health and Senior Services shall have determined that the advertising is not harmful to public health, safety and welfare.

g. Engaging in activities beyond the scope of a collaborative drug therapy management agreement.

Before a certificate shall be refused, suspended or revoked, the accused person shall be furnished with a copy of the complaint and given a hearing before the board. Any person whose certificate is so suspended or revoked shall be deemed an unlicensed person during the period of such suspension or revocation, and as those shall be subject to the penalties prescribed in this act, but that person may, at the discretion of the board, have his certificate reinstated at any time without an examination, upon application to the board. Any person to whom a certificate shall be denied by the board or whose certificate shall be suspended or revoked by the board shall have the right to review that action by appeal to the Appellate Division of the Superior Court in lieu of prerogative writ.

C.45:14-66 Drug utilization review, requirements.

27. a. A pharmacist shall conduct a drug utilization review before each new medication is dispensed or delivered to a patient.

b. A pharmacist shall conduct a prospective drug utilization review in accordance with the provisions of this section before refilling a prescription or medication order to the extent he deems appropriate in his professional judgment.

c. A pharmacist shall exercise independent professional judgment as to whether or not to dispense or refill a prescription or medication order. In determining to dispense or refill a prescription or medication order, the decision of the pharmacist shall not be arbitrary but shall be based on professional experience, knowledge or available reference materials.

C.45:14-67 Provision of counseling on new prescriptions.

28. A pharmacist or his designee shall offer to provide counseling to any person who presents a new prescription in a manner as determined pursuant to criteria established by the board.

C.45:14-68 Patient profile system.

29. a. A patient profile system shall be maintained by all pharmacies for persons for whom medications are dispensed. The patient profile record system shall enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

b. The following information generated or transferred to the individual pharmacy practice site shall be recorded in the patient profile system:

- (1) The family and the first name of the person for whom the medication is intended (the patient);
- (2) The street address and telephone number of the patient;
- (3) Indication of the patient's age, birth date or age group (infant, child, adult) and gender;

- (4) The height, weight and other patient specific criteria for those medications that are height or weight dose dependent;
- (5) The original or refill date the medication is dispensed and the initials of the dispensing pharmacist, if those initials and date are not recorded on the original prescription or in any other record approved by the board;
- (6) The number or designation identifying the prescription;
- (7) The practitioner's name;
- (8) The name, strength and quantity of the drug dispensed;
- (9) The individual history, if significant, including known allergies and drug reactions, known diagnosed disease states and a comprehensive list of medications and relevant devices; and
- (10) Any additional comments relevant to the patient's drug use, which may include any failure to accept the pharmacist's offer to counsel.

c. The information obtained shall be recorded in the patient's manual or electronic profile, or in the prescription signature log, or in any other system of records, and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling. The absence of any record of a failure to accept the pharmacist's offer to counsel shall be presumed to signify that the offer was accepted and that the counseling was provided.

C.45:14-69 Issuance of permit for pharmacy practice sites.

30. a. All pharmacy practice sites in this State, which engage in the practice of pharmacy in the State of New Jersey, shall be issued a permit by the board, and shall annually renew their permit with the board. If operations are conducted at more than one location, each location shall be issued a permit by the board for the dispensing of medicine.

b. The board may determine by rule or regulation the permit classifications of all pharmacy practice sites issued a permit under this act, and establish minimum standards for pharmacy practice sites.

c. The board shall establish by rule or regulation the criteria which each site shall meet to qualify for a permit in each classification. The board may issue permits with varying restrictions to pharmacy practice sites if the board deems it necessary.

d. Each holder of a pharmacy practice site permit shall ensure that a licensed pharmacist be immediately available on the premises to provide pharmacy services at all times the pharmacy practice site is open.

e. Each pharmacy practice site shall have a pharmacist-in-charge. The pharmacist-in-charge and the owner of a pharmacy practice site shall be responsible for any violation of any laws or regulations pertaining to the practice of pharmacy.

f. The board may enter into agreements with other states or with third parties for the purpose of exchanging information concerning the granting of permits and the inspection of pharmacy practice sites located in this State and those located outside this State.

g. The board may deny, suspend, revoke, restrict or refuse to renew a permit for a pharmacy practice site that does not comply with the provisions of this act or any rule or regulation promulgated pursuant to this act.

C.45:14-70 Permit application procedures.

31. a. The board shall specify by rule or regulation the permit application procedures to be followed, including, but not limited to, the specification of forms to be used, the time and place the application is to be made and the fees to be charged.

b. Applicants for a permit to operate a pharmacy practice site within this State shall file with the board a verified application containing the information that the board requires of the applicant relative to the qualifications for the specific permit.

c. The board shall specify, by rule or regulation, minimum standards for any pharmacy practice site within this State. Pharmacy practice sites located in New Jersey shall be operated at all times under the immediate supervision of a pharmacist licensed to practice in this State.

d. Permits issued by the board pursuant to this act shall not be transferable or assignable without the approval of the board.

C.45:14-71 Licensure required for use of certain terms.

32. No person shall carry on, conduct or transact business under a name which contains as a part thereof the words "pharmacist," "pharmacy," "apothecary," "apothecary shop," "druggist," "drug" or any word or words of similar or like import, or in any manner by advertisement, circular, poster, sign or otherwise describe or refer to the place of business by the terms "pharmacy," "apothecary," "apothecary shop," "chemist's shop," "drug store," "drugs" or any word or words of similar or like import unless the place of business is a currently licensed pharmacy practice site operated or managed at all times by a pharmacist.

C.45:14-72 Sale of non-prescription drugs, devices unaffected.

33. This act shall not prohibit, restrict or otherwise interfere with the sale of non-prescription drugs and devices at places other than a pharmacy practice site or by persons in this State who are not licensed pharmacists.

C.45:14-73 Registration of out-of-State pharmacies; requirements.

34. Any pharmacy located in another state which ships, mails, distributes or delivers in any manner, legend drugs or devices pursuant to a prescription

into this State, shall register with the board and provide the board with the following information:

(1) The location, names and titles of all principal corporate officers of the pharmacy. A report containing this information shall be made on an annual basis and within 30 days after any change of office or corporate officer; and

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. As a prerequisite to registering with the board, the pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

The annual registration fee shall be established by the board and shall not exceed \$500 annually.

Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this State and a pharmacist at a pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this State.

C.45:14-74 Report of certain occurrences.

35. a. All licensed pharmacy practice sites shall report to the board the occurrences of any of the following:

- (1) Closing of the pharmacy practice site;
- (2) Change of ownership, location, interior site design, permit classification or pharmacist-in-charge of the pharmacy practice site;
- (3) Any significant theft or loss of legend drugs or devices;
- (4) Disasters, accidents, any theft, destruction or loss of records required to be maintained by State or federal law;

(5) Any pharmacy malpractice liability insurance claim settlement, judgment or arbitration award in excess of \$10,000 to which an owner, an employee of, or the pharmacy practice site itself is a party; and

(6) Any and all other matters and occurrences as the board may require by rule or regulation.

b. The manner, time and content of the notification shall be prescribed by rule or regulation by the board.

C.45:14-75 Permit required for operation of pharmacy practice site.

36. a. No pharmacy practice site shall operate until it has been issued a permit by the board.

b. The board may suspend, revoke, deny, restrict or refuse to renew the permit of any pharmacy practice site on any of the following grounds:

(1) Findings by the board that any conduct of the permit holder or applicant is violative of any federal, State or local laws or regulations relating to the practice of pharmacy;

(2) A conviction of the permit holder or applicant under federal, State or local laws for a crime of moral turpitude or a crime that relates adversely to the practice of pharmacy;

(3) Materially false or fraudulent information contained within any application made to the board or in any application relating to drug or device prescribing, dispensing or administration;

(4) Suspension or revocation by federal, State or local government of any license or permit relating to the practice of pharmacy currently or previously held by the applicant or permit holder;

(5) Utilizing a permit to obtain remuneration by fraud, misrepresentation or deception;

(6) Dealing with drugs or devices that are known or should have been known as stolen drugs or devices;

(7) Purchasing or receiving of a drug or device by a permit holder or for use at a pharmacy practice site from a source that is not licensed under the laws of the State, except where otherwise provided;

(8) Intensive and ongoing failure to provide additional personnel, automation and technology as is necessary to ensure that the licensed pharmacist on duty has sufficient time to utilize the professional's knowledge and training and to competently perform the functions of a licensed pharmacist as required by law;

(9) Violation of any of the provisions of the "New Jersey Controlled Dangerous Substance Act," P.L.1970, c.226 (C.24:21-1 et seq.) by the applicant, permit holder or occurring at the pharmacy practice site; or

(10) Violations of any of the provisions of P.L.1978, c.73 (C.45:1-14 et seq.) by the applicant, permit holder or occurring at the pharmacy practice site.

c. Reinstatement of a permit that has been suspended or restricted by the board may be granted in accordance with the procedures specified by the board.

C.45:14-76 Compliance with federal law, standards.

37. Pharmacists and pharmacies shall comply with the provisions of the federal Standards of Practice of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

C.45:14-77 Immunity from civil damages for reports of alleged misconduct.

38. A person who in good faith and without malice provides to the board any information concerning any act by a pharmacist licensed by the board which the person has reasonable cause to believe involves misconduct that

may be subject to disciplinary action by the board, or any information relating to such conduct requested by the board in the exercise of its statutory responsibilities or which may be required by statute, shall not be liable for civil damages in any cause of action arising out of the provision of such information or services.

C.45:14-78 Currently licensed pharmacists, practice sites.

39. a. Any person who is licensed in this State as a pharmacist on the effective date of this act may continue to practice under his current license until its expiration, and to obtain a license under this act without examination upon payment of a fee.

b. Any site with a permit in this State as a pharmacy practice site on the effective date of this act may continue to operate under its current permit until its expiration.

C.45:14-79 Prior regulations unaffected.

40. This act shall not affect the orders, rules and regulations regarding the practice of pharmacy made or promulgated by the board created pursuant to R.S.45:14-1 et seq. prior to the effective date of this act.

C.45:14-80 Pharmacy technicians, conditions.

41. a. Pharmacy technicians may assist a licensed pharmacist in performing the following tasks:

- (1) Retrieval of prescription files, patient files and profiles and other records, as determined by the board, pertaining to the practice of pharmacy;
- (2) Data entry;
- (3) Label preparation; and
- (4) Counting, weighing, measuring, pouring and compounding of prescription medication or stock legend drugs and controlled substances, including the filling of an automated medication system.

b. Pharmacy technicians may accept authorization from a patient for a prescription refill, or from a physician or the physician's agent for a prescription renewal, provided that the prescription remains unchanged. As used in this section, "prescription refill" means the dispensing of medications pursuant to a prescriber's authorization provided on the original prescription and "prescription renewal" means the dispensing of medications pursuant to a practitioner's authorization to fill an existing prescription that has no refills remaining.

c. Pharmacy technicians shall not:

- (1) Receive new verbal prescriptions;
- (2) Interpret a prescription or medication order for therapeutic acceptability and appropriateness;
- (3) Verify dosage and directions;

- (4) Engage in prospective drug review;
- (5) Provide patient counseling;
- (6) Monitor prescription usage;
- (7) Override computer alerts without first notifying the pharmacist;
- (8) Transfer prescriptions from one pharmacy to another pharmacy; or
- (9) Violate patient confidentiality.

d. Except as provided in subsection e. of this section, a pharmacist shall not supervise more than two pharmacy technicians.

e. A pharmacy that wishes to employ a licensed pharmacist to pharmacy technician ratio greater than established in accordance with subsection d. of this section, shall:

(1) Establish written job descriptions, task protocols and policies and procedures that pertain to the duties performed by the pharmacy technician;

(2) Ensure and document that each pharmacy technician pass the National Pharmacy Technician Certification Examination or a board approved certification program and fulfill the requirements to maintain this status, or complete a program which includes a testing component and which has been approved by the board as satisfying the criteria as set forth in subsection f. of this section;

(3) Ensure that each pharmacy technician is knowledgeable in the established job descriptions, task protocols and policies and procedures in the pharmacy setting in which the technician is to perform his duties;

(4) Ensure that the duties assigned to any pharmacy technician do not exceed the established job descriptions, task protocols and policies and procedures;

(5) Ensure that each pharmacy technician receives in-service training before the pharmacy technician assumes his responsibilities and maintain documentation thereof;

(6) Require and maintain on site a signed patient confidentiality statement from each technician;

(7) Provide immediate personal supervision; and

(8) Provide the board, upon request, with a copy of the established job descriptions, task protocols and policies and procedures for all pharmacy technician duties.

f. If the pharmacist to pharmacy technician ratio is greater than the ratio established in accordance with the provisions of subsection d. of this section, the pharmacy shall maintain a policy and procedure manual with regard to pharmacy technicians, which shall include the following:

(1) Supervision by a pharmacist;

(2) Confidentiality safeguards of patient information;

(3) Minimum qualifications;

(4) Documentation of in-service education or ongoing training and demonstration of competency, specific to practice site and job function;

- (5) General duties and responsibilities of pharmacy technicians;
 - (6) Retrieval of prescription files, patient files, patient profile information and other records pertaining to the practice of pharmacy;
 - (7) Functions related to prescription processing;
 - (8) Functions related to prescription legend drug and controlled dangerous substance ordering and inventory control;
 - (9) Prescription refill and renewal authorization;
 - (10) Procedures dealing with documentation and records required for controlled dangerous substance and prescription legend drugs;
 - (11) Procedures dealing with medication errors;
 - (12) Pharmacy technician functions related to automated systems;
 - (13) Functions that may not be performed by pharmacy technicians; and
 - (14) A form signed by the pharmacy technician which verifies that the manual has been reviewed by the technician.
- g. The pharmacist in charge shall review the policy and procedure manual at least every two years and, if necessary, amend the manual as needed. Documentation of the review shall be made available to the board upon request.
- h. Pharmacy technicians shall wear an identification tag, which shall include at least their first name, the first initial of their last name and title.
- i. On pharmacy permit renewal applications, the pharmacy shall list the name and address of all pharmacy technicians which it currently employs.
- j. When pharmacy technicians are engaged in any activities permitted in accordance with the provisions of this section, the licensed pharmacists on site shall be responsible for these activities.

Repealer.

42. R.S.45:14-1 et seq.; section 6 of P.L.1970, c.331 (C.45:14-3.1); section 4 of P.L.1991, c.304 (C.45:14-3.2); P.L.1946, c.177 (C.45:14-7.2); P.L.1948, c.50 (C.45:14-7.3); P.L.1969, c.164 (C.45:14-8.1); P.L.1944, c.132 (C.45:14-11.1); P.L.1995, c.79 (C.45:14-11.11 through 45:14-11.16), section 3 of P.L.1965, c.120 (C.45:14-12.1); P.L.1996, c.154 (C.45:14-14.1 through 45:14-14.6); P.L.1993, c.120 (C.45:14-15.1 through 45:14-15.4); section 2 of P.L.1953, c.329 (C.45:14-16.1); sections 1 and 2 of P.L.1949, c.93 (C.45:14-26.1 and 45:14-26.2); and P.L.1948, c.105 (C.45:14-36.1 through 45:14-36.4) are repealed.

43. This act shall take effect on the 180th day following enactment, except that section 4 shall take effect immediately.

Approved January 14, 2004.

CHAPTER 281

AN ACT concerning eligibility for certain programs for the aged and disabled and supplementing Titles 30 and 48 of the Revised Statutes.

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

C.30:4D-21.4 PAAD recipients, notification as to error in estimated annual income.

1. a. Notwithstanding the provisions of any other law to the contrary, a recipient of benefits under the "Pharmaceutical Assistance to the Aged and Disabled" program, established pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.), shall notify the Department of Health and Senior Services if the recipient unintentionally errs in estimating annual income to determine eligibility for the program due to an unanticipated payment which would render the recipient ineligible for the program. Notification to the department shall be made in the time and manner prescribed by the department.

b. If the department determines that the payment was unanticipated, the recipient shall reimburse the program for only those benefits that were paid by the program after the recipient received the unanticipated payment.

c. If the department determines that the payment was not unanticipated, the recipient shall reimburse the program for all benefits that were paid by the program in the calendar year in which the payment was received.

d. Within 30 days of receipt of a determination by the department that the payment was not unanticipated, a recipient may request a hearing, which shall be conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Nothing in this section shall preclude a recipient from reapplying for benefits in the calendar year following the year in which the recipient notified the department pursuant to subsection a. of this section.

C.30:4D-38.1 "Hearing Aid Assistance for the Aged and Disabled," notification as to error in estimated annual income.

2. a. Notwithstanding the provisions of any other law to the contrary, a recipient of benefits under the "Hearing Aid Assistance for the Aged and Disabled" program, established pursuant to P.L.1987, c.298 (C.30:4D-36 et seq.), shall notify the Department of Health and Senior Services if the recipient unintentionally errs in estimating annual income to determine eligibility for the program due to an unanticipated payment which would render the recipient ineligible for the program. Notification to the department shall be made in the time and manner prescribed by the department.

b. If the department determines that the payment was unanticipated, the recipient shall reimburse the program for only those benefits that were paid by the program after the recipient received the unanticipated payment.

c. If the department determines that the payment was not unanticipated, the recipient shall reimburse the program for all benefits that were paid by the program in the calendar year in which the payment was received.

d. Within 30 days of receipt of a determination by the department that the payment was not unanticipated, a recipient may request a hearing, which shall be conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Nothing in this section shall preclude a recipient from reapplying for benefits in the calendar year following the year in which the recipient notified the department pursuant to subsection a. of this section.

C.30:4D-45.1 "Senior Gold Prescription Discount Program," notification as to error in estimated annual income.

3. a. Notwithstanding the provisions of any other law to the contrary, a recipient of benefits under the "Senior Gold Prescription Discount Program," established pursuant to P.L.2001, c.96 (C.30:4D-43 et seq.), shall notify the Department of Health and Senior Services if the recipient unintentionally errs in estimating annual income to determine eligibility for the program due to an unanticipated payment which would render the recipient ineligible for the program. Notification to the department shall be made in the time and manner prescribed by the department.

b. If the department determines that the payment was unanticipated, the recipient shall reimburse the program for only those benefits that were paid by the program after the recipient received the unanticipated payment.

c. If the department determines that the payment was not unanticipated, the recipient shall reimburse the program for all benefits that were paid by the program in the calendar year in which the payment was received.

d. Within 30 days of receipt of a determination by the department that the payment was not unanticipated, a recipient may request a hearing, which shall be conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Nothing in this section shall preclude a recipient from reapplying for benefits in the calendar year following the year in which the recipient notified the department pursuant to subsection a. of this section.

C.48:2-29.16a "Lifeline Credit Program," notification as to error in estimated annual income.

4. a. Notwithstanding the provisions of any other law to the contrary, a recipient of benefits under the "Lifeline Credit Program," established pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), shall notify the Department of Health and Senior Services if the recipient unintentionally errs in estimating annual

income to determine eligibility for the program due to an unanticipated payment which would render the recipient ineligible for the program. Notification to the department shall be made in the time and manner prescribed by the department.

b. If the department determines that the payment was unanticipated, the recipient shall reimburse the program for only those benefits that were paid by the program after the recipient received the unanticipated payment.

c. If the department determines that the payment was not unanticipated, the recipient shall reimburse the program for all benefits that were paid by the program in the calendar year in which the payment was received.

d. Within 30 days of receipt of a determination by the department that the payment was not unanticipated, a recipient may request a hearing, which shall be conducted pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.).

e. Nothing in this section shall preclude a recipient from reapplying for benefits in the calendar year following the year in which the recipient notified the department pursuant to subsection a. of this section.

C.48:2-29.32a "Tenants' Lifeline Assistance Program," notification as to error in estimated annual income.

5. a. Notwithstanding the provisions of any other law to the contrary, a recipient of benefits under the "Tenants' Lifeline Assistance Program," established pursuant to P.L. 1981, c.210 (C.48:2-29.30 et seq.), shall notify the Department of Health and Senior Services if the recipient unintentionally errs in estimating annual income to determine eligibility for the program due to an unanticipated payment which would render the recipient ineligible for the program. Notification to the department shall be made in the time and manner prescribed by the department.

b. If the department determines that the payment was unanticipated, the recipient shall reimburse the program for only those benefits that were paid by the program after the recipient received the unanticipated payment.

c. If the department determines that the payment was not unanticipated, the recipient shall reimburse the program for all benefits that were paid by the program in the calendar year in which the payment was received.

d. Within 30 days of receipt of a determination by the department that the payment was not unanticipated, a recipient may request a hearing, which shall be conducted pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.).

e. Nothing in this section shall preclude a recipient from reapplying for benefits in the calendar year following the year in which the recipient notified the department pursuant to subsection a. of this section.

6. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Department of Health and Senior Services shall adopt rules and regulations to effectuate the purposes of this act.

7. This act shall take effect on January 1 next following the date of enactment.

Approved January 14, 2004.

CHAPTER 282

AN ACT concerning wanted person checks of inmates and suspects and supplementing chapter 4 of Title 30 of the Revised Statutes.

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

C.30:4-91.3c Definitions relative to wanted person checks.

1. For the purposes of this act:

"County correctional facility" means a county jail, penitentiary, prison or workhouse.

"Municipal jail" means a municipal jail, lockup, police station or other place maintained by a municipality for the detention of suspects or offenders.

"State correctional facility" means a State prison or other penal institution or a State-contracted half-way house.

"Wanted person check" means a determination of whether a person has an outstanding arrest warrant or pending charges by accessing the New Jersey Wanted Person System (NJWPS) and New Jersey Criminal Justice Information System (NJCJIS) in the files of the National Crime Information Center (NCIC).

C.30:4-91.3d Conducting wanted person check on inmates or suspects.

2. a. A wanted person check shall be conducted on every person serving a sentence or detained as a suspect in a State correctional facility, county correctional facility or municipal jail to determine if there are any outstanding arrest warrants or charges pending against the inmate or suspect.

b. Except for a transfer from one State correctional facility to another State correctional facility, a person serving a sentence or detained as a suspect in a State correctional facility, county correctional facility or municipal jail shall not be released or transferred before a wanted person check of the inmate or suspect has been conducted to determine if any there are any outstanding arrest warrants or charges pending against the inmate or suspect.

c. If the wanted person check of a person conducted pursuant to subsection b. of this section reveals outstanding arrest warrants or criminal charges against the inmate or suspect, the law enforcement authority with jurisdiction over the outstanding arrest warrant or criminal charges shall be notified that the inmate or suspect is in the custody of the State correctional facility, county correctional facility or municipal jail.

d. If the wanted person check of a person conducted pursuant to subsection b. of this section reveals outstanding arrest warrants or charges pending against the inmate or suspect, the inmate or suspect shall not be transferred to another facility or jail, other than a transfer from one State correctional facility to another State correctional facility, unless the receiving facility or jail is notified in advance of the outstanding arrest warrants or pending charges. A copy of the outstanding arrest warrants or pending charges shall accompany the transferred inmate or suspect.

e. If the wanted person check of a person conducted pursuant to subsection b. of this section reveals outstanding arrest warrants or charges pending against the inmate or suspect from another jurisdiction, the jurisdiction shall be notified that the inmate or suspect is in the custody of the State correctional facility, county correctional facility or municipal jail.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 283

AN ACT concerning criminal penalties and amending P.L.1997, c.182.

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

1. Section 2 of P.L.1997, c.182 (C.2C:12-13) is amended to read as follows:

C.2C:12-13 Throwing bodily fluid at certain law enforcement officers deemed aggravated assault; grading, sentence.

2. A person who throws a bodily fluid at a Department of Corrections employee, county corrections officer, juvenile corrections officer, State juvenile facility employee, juvenile detention staff member, probation officer, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer while in the performance of his duties or otherwise

purposely subjects such employee to contact with a bodily fluid commits an aggravated assault. If the victim suffers bodily injury, this shall be a crime of the third degree. Otherwise, this shall be a crime of the fourth degree. A term of imprisonment imposed for this offense shall run consecutively to any term of imprisonment currently being served and to any other term imposed for another offense committed at the time of the assault. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation or attempted violation of chapter 11 of Title 2C of the New Jersey Statutes or subsection b. of N.J.S.2C:12-1 or any other provision of the criminal laws.

2. This act shall take effect immediately.

Approved January 14, 2003.

CHAPTER 284

AN ACT requiring meningococcal vaccinations for students at certain institutions of higher education, amending P.L.2000, c.25 and supplementing Title 18A of the New Jersey Statutes.

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

1. Section 2 of P.L.2000, c.25 (C.18A:61D-7) is amended to read as follows:

C.18A:61D-7 Meningococcal vaccinations, dissemination of information about meningitis to college students.

2. Beginning with the 2000-2001 school year, each four-year public or private institution of higher education in this State, in a manner prescribed by regulation of the Commissioner of Health and Senior Services and consistent with the purposes of section 1 of P.L.2000, c.25 (C.26:2X-1), shall:

a. provide information about meningitis, as well as the meningococcal vaccination requirement established pursuant to section 2 of P.L.2003, c.284 (C.18A:62-15.1), to all prospective students prior to their matriculation, and include with that information notice of the availability and benefits of a meningococcal vaccination; and

b. develop procedures for facilitating, receiving and recording student responses to the information provided pursuant to subsection a. of this section, including: compliance with the vaccination requirement established pursuant

to section 2 of P.L.2003, c.284 (C.18A:62-15.1); and the decision of any student who is exempted from that requirement to receive the vaccination.

C.18A:62-15.1 Meningococcal vaccination required for certain students residing in college dorms.

2. a. Beginning in September 2004, a new student enrolling in a program leading to an academic degree at a public or private institution of higher education in this State, who resides in a campus dormitory, shall receive a meningococcal vaccination as a condition of attendance at that institution, except as provided in section 3 of this act.

As used in this act, "institution of higher education" means a university or college that provides a four-year program of instruction.

b. A student shall present evidence of the vaccination required pursuant to subsection a. of this section to the institution in a manner prescribed by the institution.

c. The Department of Health and Senior Services shall require each public or private institution of higher education in this State to offer the vaccination required pursuant to subsection a. of this section to its students through the institution's student health services program or through a contractual agreement with a community health care provider.

d. The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of subsections a., b. and c. of this section and section 3 of this act.

e. Nothing in this act shall be construed to require a student who does not reside in a campus dormitory to receive a meningococcal vaccination.

C.18A:62-15.2 Exemption from vaccination.

3. a. A student shall not be required to receive a vaccination pursuant to subsection a. of section 2 of this act based upon one of the following:

(1) a written statement submitted to the institution of higher education by a licensed physician indicating that the vaccine is medically contraindicated for a specific period of time and the reasons for the medical contraindication, based upon valid medical reasons as determined by regulation of the Commissioner of Health and Senior Services, which shall exempt the student from the vaccination for the stated period of time; or

(2) a written statement submitted to the institution of higher education by the student, or the student's parent or guardian if the student is a minor, explaining how the administration of the vaccine conflicts with the bona fide religious tenets or practices of the student, or the parent or guardian, as appropriate; except that a general philosophical or moral objection to the vaccination shall not be sufficient for an exemption on religious grounds.

b. In the event of an actual or threatened outbreak of meningitis at a public or private institution of higher education in this State, the institution may exclude

from attendance a student who has been exempted from the vaccination requirement of this act pursuant to subsection a. of this section, as determined by the Commissioner of Health and Senior Services.

4. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 285

AN ACT concerning urban enterprise zones and amending P.L.1983, c.303 and P.L.1995, c.382.

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

1. Section 3 of P.L.1983, c.303 (C.52:27H-62) is amended to read as follows:

C.52:27H-62 Definitions.

3. As used in this act:

a. "Enterprise zone" or "zone" means an urban enterprise zone designated by the authority pursuant to this act;

b. "Authority" means the New Jersey Urban Enterprise Zone Authority created by this act;

c. "Qualified business" means any entity authorized to do business in the State of New Jersey which, at the time of designation as an enterprise zone or a UEZ-impacted business district, is engaged in the active conduct of a trade or business in that zone or district; or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone or district and has at least 25% of its full-time employees employed at a business location in the zone or district, meeting one or more of the following criteria:

(1) Residents within the zone, the district, within another zone or within a qualifying municipality; or

(2) Unemployed for at least six months prior to being hired and residing in New Jersey, and recipients of New Jersey public assistance programs for at least six months prior to being hired, or either of the aforesaid; or

(3) Determined to be low income individuals pursuant to the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2811);

d. "Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of P.L.1983, c.303 (C.52:27H-73), an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that any municipality which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) shall qualify if its municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Planning and Analysis of the State Department of Labor. In addition to those municipalities that qualify pursuant to the criteria set forth above, that municipality accorded priority designation pursuant to subsection e. of section 7 of P.L.1983, c.303 (C.52:27H-66), that municipality set forth in paragraph (7) and paragraph (8) of section 3 of P.L.1995, c.382 (C.52:27H-66.1), and the municipalities in which the three additional enterprise zones, including the joint enterprise zone, are to be designated pursuant to criteria according priority consideration for designation of the zones pursuant to section 12 of P.L.2001, c.347 (C.52:27H-66.7) shall be deemed qualifying municipalities;

e. "Public assistance" means income maintenance funds administered by the Department of Human Services or by a county welfare agency;

f. "Zone development corporation" means a nonprofit corporation or association created or designated by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of P.L.1983, c.303 (C.52:27H-68) and to prepare, monitor, administer and implement the zone development plan;

g. "Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality;

h. "Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to this act; which is organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes; and which has for its principal purpose the encouragement and support of community activities within, or on behalf of, the zone so as to (1) stimulate economic activity, (2) increase or preserve residential amenities, or (3) otherwise encourage community cooperation in achieving the goals of the zone development plan;

- i. "Enterprise zone assistance fund" or "assistance fund" means the fund created by section 29 of P.L.1983, c.303 (C.52:27H-88); and
- j. "UEZ-impacted business district" or "district" means an economically-distressed business district classified by the authority as having been negatively impacted by two or more adjacent urban enterprise zones in which 50% less sales tax is collected pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80).

2. Section 7 of P.L.1983, c.303 (C.52:27H-66) is amended to read as follows:

C.52:27H-66 Designation of enterprise zones.

7. The authority shall designate enterprise zones from among those areas of qualifying municipalities determined to be eligible pursuant to this act. No more than 31 enterprise zones shall be in effect at any one time. No more than one enterprise zone shall be designated in any one municipality. Except as otherwise provided by section 11 of P.L.2001, c.347 (C.52:27H-66.6), any designation granted shall be for a period of 20 years, beginning with the year in which a zone is eligible for an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), and shall not be renewed at the end of that period. In designating enterprise zones the authority shall seek to avoid excessive geographic concentration of zones in any particular region of the State. At least six of the 10 additional enterprise zones authorized pursuant to section 3 of P.L.1993, c.367 shall be located in counties in which enterprise zones have not previously been designated and shall be designated within 90 days of the date of the submittal of an application and zone development plan. The authority shall accept applications within 90 days of the effective date of P.L. 1993, c.367. Notwithstanding the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.) to the contrary, the six additional enterprise zones to be designated by the authority pursuant to the criteria for priority consideration in this section shall be entitled to an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The following criteria shall be utilized in according priority consideration for designation of these zones by the authority:

- a. One zone shall be located in a county of the second class with a population greater than 595,000 and less than 675,000 according to the latest federal decennial census and shall be located in the qualifying municipality in that county with the highest annual average number of unemployed persons and the highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor;

b. Two zones shall be located in a county of the second class with a population greater than 445,000 and less than 455,000 according to the latest federal decennial census, one of which shall be located in the qualifying municipality in that county with the highest annual average number of unemployed persons and the highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor, and one of which shall be located in the qualifying municipality in that county with the second highest annual average number of unemployed persons and the second highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor;

c. One zone shall be located in a county of the third class with a population greater than 84,000 and less than 92,000 according to the latest federal decennial census and shall be located in the qualifying municipality in that county with the highest annual average number of unemployed persons and the highest average annual unemployment rate for the 1992 calendar year according to the estimate by the State Department of Labor;

d. One zone shall be located within two noncontiguous qualifying municipalities but comprised of not more than two noncontiguous areas each having a continuous border, if:

(1) both municipalities are located in the same county which shall be a county of the fifth class with a population greater than 500,000 and less than 555,000 according to the latest federal decennial census;

(2) the two municipalities submit a joint application and zone development plan; and

(3) each of the municipalities has a population greater than 16,000 and less than 30,000 and a population density of more than 5,000 persons per square mile, according to the latest federal decennial census; and

e. One zone shall be located within a municipality having a population greater than 38,000 and less than 46,000 according to the latest federal decennial census if the municipality is located within a county of the fifth class with a population greater than 340,000 and less than 440,000 according to the latest federal decennial census.

3. Section 3 of P.L.1995, c.382 (C.52:27H-66.1) is amended to read as follows:

C.52:27H-66.1 Additional zones authorized.

3. The additional seven zones authorized pursuant to P.L.1995, c.382 (C.52:27H-66.1 et al.) and the additional zone authorized pursuant to P.L.2003, c.285 shall be designated within 90 days of the date of the submittal of an application and zone development plan. The authority shall accept applications within 90 days of the effective date of P.L.1995, c.382 (C.52:27H-66.1 et

al.) or P.L.2003, c.285, as applicable, for those zones that fulfill the criteria set forth in this section. Notwithstanding the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.) to the contrary, the eight additional enterprise zones to be designated by the authority pursuant to the criteria for priority consideration set forth in this section shall be entitled to an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The following criteria shall be utilized in according priority consideration for designation of the seven additional enterprise zones authorized pursuant to P.L.1995, c.382 (C.52:27H-66.1 et al.) and the additional enterprise zone authorized pursuant to P.L.2003, c.285:

(1) One zone shall be located in a qualifying municipality with a population greater than 55,000 and less than 65,000 according to the latest federal decennial census in a county of the first class with a population density greater than 6,100 and less than 6,700 persons per square mile according to the latest federal decennial census provided that the qualifying municipality is contiguous to a municipality in which an enterprise zone is designated;

(2) One zone shall be located in a qualifying municipality with a population greater than 70,000 and less than 80,000 according to the latest federal decennial census;

(3) One zone shall be located in a qualifying municipality with a population greater than 38,000 and less than 39,500 according to the latest federal decennial census;

(4) One zone shall be located in a qualifying municipality with a population greater than 45,000 and less than 55,000 according to the latest federal decennial census;

(5) One zone shall be located in a qualifying municipality with a population greater than 21,000 and less than 22,000;

(6) One zone shall be located in a qualifying municipality with a population greater than 29,000 and less than 32,000 according to the latest federal decennial census;

(7) One zone shall be located within a qualifying municipality having a population greater than 7,000 and less than 9,000 according to the latest federal decennial census in a county of the first class with a population greater than 550,000 and less than 560,000 according to the latest federal decennial census; and

(8) An additional zone shall be located within a qualifying municipality with a population greater than 11,400 and less than 11,600 according to the latest federal decennial census in a county of the second class with a population greater than 500,000 and less than 520,000 according to the latest federal decennial census.

4. This act shall take effect on the first day of the third month following enactment.

Approved January 14, 2004.

CHAPTER 286

AN ACT concerning domestic violence and amending P.L.1999, c.421 and P.L.1977, c.367.

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

1. Section 1 of P.L.1999, c.421 (C.2C:25-34) is amended to read as follows:

C.2C:25-34 Domestic violence restraining orders, central registry.

1. The Administrative Office of the Courts shall establish and maintain a central registry of all persons who have had domestic violence restraining orders entered against them, all persons who have been charged with a crime or offense involving domestic violence, and all persons who have been charged with a violation of a court order involving domestic violence. All records made pursuant to this section shall be kept confidential and shall be released only to:

- a. A public agency authorized to investigate a report of domestic violence;
- b. A police or other law enforcement agency investigating a report of domestic violence, or conducting a background investigation involving a person's application for a firearm permit or employment as a police or law enforcement officer or for any other purpose authorized by law or the Supreme Court of the State of New Jersey;
- c. A court, upon its finding that access to such records may be necessary for determination of an issue before the court; or
- d. A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding.

Any individual, agency, surrogate or court which receives from the Administrative Office of the Courts the records referred to in this section shall keep such records and reports, or parts thereof, confidential and shall not disseminate or disclose such records and reports, or parts thereof; provided that nothing in this section shall prohibit a receiving individual, agency, surrogate or court from disclosing records and reports, or parts thereof, in a manner consistent with and in furtherance of the purpose for which the records and reports or parts thereof were received.

Any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, for a purpose other than investigating a report of domestic violence, conducting a background investigation involving a person's application for a firearm permit or employment as a police or law enforcement officer, making a determination of an issue before the court, or for any other purpose other than that which is authorized by law or the Supreme Court of the State of New Jersey, shall be guilty of a crime of the fourth degree.

2. Section 11 of P.L.1977, c.367 (C.9:3-47) is amended to read as follows:

C.9:3-47 Action on complaint for adoption of child received from approved agency.

11. a. When the child to be adopted has been received from an approved agency, the prospective parent shall file with the court a complaint for adoption after the child has been in the home of the prospective parent for at least six months. In the discretion of the approved agency, a complaint may be filed prior to that time and the court may schedule a hearing to resolve all matters except finalization of the adoption. The adoption shall not be finalized under this section unless the child has been in the home of the adoptive parent for at least six months. The complaint shall be accompanied by a consent to the plaintiff's adoption of the child signed and acknowledged by an authorized officer or representative of the approved agency; except that failure or refusal on the part of the approved agency to give consent, or withdrawal of consent on the part of the approved agency, shall not preclude an action for adoption.

b. Upon the filing of the complaint, the court shall set a date for the adoption hearing not less than 10 nor more than 30 days from the date of institution of the action unless a longer period shall be required in order to obtain service of notice upon one or more of the people entitled thereto and shall order the approved agency concerned to file at least five days prior to the hearing a written report which shall describe the circumstances surrounding the surrender of the child and shall set forth the results of the agency's evaluation of the child, the plaintiff and any other person residing in the proposed adoptive home; and the agency's assessment of the care being received by the child and the adjustment of the child and the plaintiff as members of a family.

Upon the request of a surrogate and not more than 30 days prior to the hearing, the court shall conduct a search of the records of the central registry established pursuant to section 1 of P.L.1999, c.421 (C.2C:25-34) to determine whether a prospective adoptive parent or any member of the parent's household has:

- (1) had a domestic violence restraining order entered against them; or
- (2) been charged with a violation of a court order involving domestic violence.

The court shall provide the results of the search to the surrogate for inclusion in the court's adoption file. If the results of the search contain any material

findings or recommendations adverse to the plaintiff, the surrogate shall provide the material findings or recommendations to the approved agency.

If the agency's report contains or the results of the court's search of the central registry contain any material findings or recommendations adverse to the plaintiff, the agency shall serve a copy of that part of the agency's report or the results of the court's search upon the plaintiff at least five days prior to the hearing and the court shall appoint a guardian ad litem for the child in the adoption proceeding if the court determines that a guardian is necessary to represent the best interests of the child. If the approved agency that placed the child with the plaintiff has not consented to the adoption, the court may appoint another approved agency to conduct an investigation and make recommendations in the matter. The appointment shall not deprive the placing agency of standing to appear at the hearing and contest the adoption. Personal appearance at the hearing by a representative of the approved agency conducting the investigation may be dispensed with by the court if the agency's report favors the adoption. If an appearance is required, the approved agency shall be entitled to present testimony and to cross-examine witnesses and shall be subject to cross-examination with respect to its report and recommendations in the matter. The appearance of the child to be adopted shall not be required unless ordered by the court or unless the inquiry pursuant to section 13 of P.L.1977, c.367 (C.9:3-49) indicates that the child is opposed to the adoption.

c. The adoption hearing shall be held in camera. If a parent of the child has made an objection to the adoption, in accordance with section 10 of P.L.1977, c.367 (C.9:3-46), the court shall take evidence relating to the objection. If the court finds against the objecting parent in accordance with subsection a. of section 10 of P.L.1977, c.367 (C.9:3-46), it shall make an order terminating the parental rights of the parent and proceed with the hearing.

d. If, based upon the approved agency's report and the evidence presented at the hearing, the court is satisfied that the best interests of the child would be promoted by the adoption, the court shall enter a judgment of adoption. If, based upon the approved agency's report and the evidence presented at the hearing, the court is not satisfied that the best interests of the child would be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

3. Section 12 of P.L.1977, c.367 (C.9:3-48) is amended to read as follows:

C.9:3-48 Action on complaint for adoption of child not received from approved agency.

12. a. When the child to be adopted has not been received from an approved agency, the prospective parent shall file with the court a complaint for adoption. Upon receipt of the complaint, the court shall by its order:

(1) Declare the child to be a ward of the court and declare that the plaintiff shall have custody of the child subject to further order of the court;

(2) Appoint an approved agency to make an investigation and submit a written report to the court which shall include:

(a) the facts and circumstances surrounding the surrender of custody by the child's parents and the placement of the child in the home of the plaintiff, including the identity of any intermediary who participated in the placement of the child;

(b) an evaluation of the child and of the plaintiff and the spouse of the plaintiff if not the child's parent and any other person residing in the prospective home; and

(c) any fees, expenses or costs paid by or on behalf of the adopting parent in connection with the adoption.

The agency conducting the investigation shall, if it is able to, contact the birth parent and confirm that counseling, if required by section 18 of P.L. 1993, c.345 (C.9:3-39.1), has either been provided or waived by the birth parent. If not previously provided, the agency shall advise the parent of the availability of such counseling through the agency and shall provide such counseling if requested by the birth parent or if the birth parent resides out of State or out of the country, such counseling should be made available by or through an agency approved to provide such counseling in the birth parent's state or country of domicile. The agency shall further confirm that the birth parent has been advised that the decision of the birth parent not to place the child for adoption or the return of the child to the birth parent can not be conditioned upon the repayment of expenses by the birth parent to the adoptive parent.

All expenses and fees for the investigation and any counseling provided shall be the responsibility of the plaintiff;

(3) Direct the plaintiff to cooperate with the approved agency making the investigation and report;

(4) Fix a day for a preliminary hearing not less than two or more than three months from the date of the filing of the complaint; except that the hearing may be accelerated upon the application of the approved agency and upon notice to the plaintiff if the agency determines that removal of the child from the plaintiff's home is required, in which case the court shall appoint a guardian ad litem to represent the child at all future proceedings regarding the adoption.

Whenever the plaintiff is a stepparent of the child, the court, in its discretion, may dispense with the agency investigation and report and take direct evidence at the preliminary hearing of the facts and circumstances surrounding the filing of the complaint for adoption.

Whenever a plaintiff is a brother, sister, grandparent, aunt, uncle, or birth father of the child, the order may limit the investigation to an inquiry concerning the status of the parents of the child and an evaluation of the plaintiff. At least

10 days prior to the day fixed for the preliminary hearing the approved agency shall file its report with the court and serve a copy on the plaintiff; and

(5) Conduct a search of the records of the central registry established pursuant to section 1 of P.L.1999, c.421 (C.2C:25-34), upon the request of a surrogate and not more than 30 days prior to the preliminary hearing, to determine whether a prospective adoptive parent or any member of the parent's household has:

- (a) had a domestic violence restraining order entered against them; or
- (b) been charged with a violation of a court order involving domestic violence.

The court shall provide the results of the search to the surrogate for inclusion in the court's adoption file. If the results of the search contain any material findings or recommendations adverse to the plaintiff, the surrogate shall provide the material findings or recommendations to the approved agency.

In a case in which the plaintiff is a stepparent of the child and the court dispenses with the agency investigation and report pursuant to paragraph (4) of this subsection and the results of the court's search contain any material findings or recommendations adverse to the plaintiff, the surrogate shall serve a copy of that part of the results of the search upon the plaintiff at least five days prior to the preliminary hearing.

b. The preliminary hearing shall be in camera and shall have for its purpose the determination of the circumstances under which the child was relinquished by his parents and received into the home of the plaintiff, the status of the parental rights of the parents, the fitness of the child for adoption and the fitness of the plaintiff to adopt the child and to provide a suitable home. If the report of the approved agency pursuant to subsection a. of this section contains or the results of the search of the central registry contain material findings or recommendations adverse to the plaintiff, the presence of a representative of the approved agency who has personal knowledge of the investigation shall be required at the preliminary hearing. If in the course of the preliminary hearing the court determines that there is lack of jurisdiction, lack of qualification on the part of the plaintiff or that the best interests of the child would not be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

c. If upon completion of the preliminary hearing the court finds that:

(1) The parents of the child do not have rights as to custody of the child by reason of their rights previously having been terminated by court order; or, the parents' objection has been contravened pursuant to subsection a. of section 10 of P.L.1977, c.367 (C.9:3-46);

(2) The guardian, if any, should have no further control or authority over the child;

(3) The child is fit for adoption; and

(4) The plaintiff is fit to adopt the child, the court shall: (a) issue an order stating its findings, declaring that no parent or guardian of the child has a right to custody or guardianship of the child; (b) terminate the parental rights of that person, which order shall be a final order; (c) fix a date for final hearing not less than six nor more than nine months from the date of the preliminary hearing; and (d) appoint an approved agency to supervise and evaluate the continuing placement in accordance with subsection d. of this section. If the plaintiff is a brother, sister, grandparent, aunt, uncle, birth father, stepparent or foster parent of the child, or if the child has been in the home of the plaintiff for at least two years immediately preceding the commencement of the adoption action, and if the court is satisfied that the best interests of the child would be promoted by the adoption, the court may dispense with this evaluation and final hearing and enter a judgment of adoption immediately upon completion of the preliminary hearing.

d. The approved agency appointed pursuant to subsection c. of this section shall from time to time visit the home of the plaintiff and make such further inquiry as may be necessary to observe and evaluate the care being received by the child and the adjustment of the child and the plaintiff as members of a family. At least 15 days prior to the final hearing the approved agency shall file with the court a written report of its findings, including a recommendation concerning the adoption, and shall mail a copy of the report to the plaintiff.

If at any time following the preliminary hearing the approved agency concludes that the best interests of the child would not be promoted by the adoption, the court shall appoint a guardian ad litem for the child and after a hearing held upon the application of the approved agency and upon notice to the plaintiff, may modify or revoke any order entered in the action and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

e. At the final hearing the court shall proceed in camera; except that if the approved agency in its report pursuant to subsection d. of this section has recommended that the adoption be granted, the final hearing may be dispensed with and, if the court is satisfied that the best interests of the child would be promoted by the adoption, a judgment of adoption may be entered immediately.

The appearance of the approved agency at the final hearing shall not be required unless its recommendations are adverse to the plaintiff or unless ordered by the court. If its appearance is required, the approved agency shall be entitled to present testimony and to cross-examine witnesses and shall be subject to cross-examination with respect to its report and recommendations in the matter.

f. If, based upon the report and the evidence presented, the court is satisfied that the best interests of the child would be promoted by the adoption,

the court shall enter a judgment of adoption. If, based upon the evidence, the court is not satisfied that the best interests of the child would be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

4. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 287

AN ACT concerning the placement of certain juvenile offenders and amending P.L.1982, c.77.

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

1. Section 18 of P.L.1982, c.77 (C.2A:4A-37) is amended to read as follows:

C.2A:4A-37 Place of detention or shelter.

18. Place of detention or shelter. a. The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) shall specify the place where a juvenile may be detained; and the Department of Human Services shall specify where a juvenile may be placed in shelter.

b. No juvenile shall be placed in detention or shelter care in any place other than that specified by the Juvenile Justice Commission or Department of Human Services as provided in subsection a.

c. A juvenile being held for a charge under this act or for a violation of or contempt in connection with a violation of Title 39 of the Revised Statutes, chapter 7 of Title 12 of the Revised Statutes or N.J.S.2C:33-13, including a juvenile who has reached the age of 18 years after being charged, shall not be placed in any prison, jail or lockup nor detained in any police station, except that if no other facility is reasonably available a juvenile may be held in a police station in a place other than one designed for the detention of prisoners and apart from any adult charged with or convicted of a crime for a brief period if such holding is necessary to allow release to his parent, guardian, other suitable person, or approved facility. No juvenile shall be placed in a detention facility which has reached its maximum population capacity, as designated by the Juvenile Justice Commission.

d. No juvenile charged with delinquency shall be transferred to an adult county jail solely by reason of having reached age 18. The following standards shall apply to any juvenile who has been placed on probation pursuant to section 24 of P.L. 1982, c.77 (C.2A:4A-43) and who violates the conditions of that probation after reaching the age of 18; who has been placed on parole pursuant to the provisions of the "Parole Act of 1979," P.L. 1979, c.441 (C.30:4-123.45 et seq.) and who violates the conditions of that parole after reaching the age of 18; or who is arrested after reaching the age of 18 on a warrant emanating from the commission of an act of juvenile delinquency:

(1) In the case of a person 18 years of age but less than 20 years of age, the court, upon application by any interested party, shall determine the place of detention, taking into consideration the age and maturity of the person, whether the placement of the person in a juvenile detention facility would present a risk to the safety of juveniles residing at the facility, the likelihood that the person would influence in a negative manner juveniles incarcerated at the facility, whether the facility has sufficient space available for juveniles and any other factor the court deems appropriate. Upon application at any time by the juvenile detention facility administrator or any other interested party, the court may order that the person be relocated to the county jail. The denial of an application shall not preclude subsequent applications based on a change in circumstances or information that was not previously made available to the court. The determination of the place of detention shall be made in a summary manner;

(2) In the case of a person 20 years of age or older, the person shall be incarcerated in the county jail unless good cause is shown.

e. (1) The Juvenile Justice Commission and the Department of Human Services shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for juvenile detention facilities or shelters under their respective supervision.

(2) The Juvenile Justice Commission and the Department of Human Services, in consultation with the appropriate county administrator of the county facility or shelter, shall assign a maximum population capacity for each juvenile detention facility or shelter based on minimum standards for these facilities.

f. (1) Where either the Juvenile Justice Commission or the Department of Human Services determines that a juvenile detention facility or shelter under its control or authority is regularly over the maximum population capacity or is in willful and continuous disregard of the minimum standards for these facilities or shelters, the commission or department may restrict new admissions to the facility or shelter.

(2) Upon making such determination, the commission or department shall notify the governing body of the appropriate county of its decision to impose such a restriction, which notification shall include a written statement

specifying the reasons therefor and corrections to be made. If the commission or department shall determine that no appropriate action has been initiated by the administrator of the facility or shelter within 60 days following such notification to correct the violations specified in the notification, it shall order that such juvenile detention facility or shelter shall immediately cease to admit juveniles. The county shall be entitled to a hearing where such a restriction is imposed by the commission or department.

(3) Any juvenile detention facility or shelter so restricted shall continue under such order until such time as the commission or department determines that the violation specified in the notice has been corrected or that the facility or shelter has initiated actions which will ensure the correction of said violations.

(4) Upon the issuance of an order to cease admissions to a juvenile detention facility or shelter, the commission or department shall determine whether other juvenile detention facilities or shelters have adequate room for admitting juveniles and shall assign the juveniles to the facilities or shelters on the basis of available space; provided that the department shall not assign the juvenile to a facility or shelter where such facility or shelter is at the maximum population. A juvenile detention facility or shelter ordered to accept a juvenile shall do so within five days following the receipt of an order to accept admission of such juvenile.

(5) A juvenile detention facility or shelter restricted by an order to cease admissions shall assume responsibility for the transportation of a juvenile sent to another juvenile detention facility or shelter so long as the order shall remain in effect.

(6) A facility or shelter receiving juveniles pursuant to paragraph (4) of this subsection shall receive from the sending county a reasonable and appropriate per diem allowance for each juvenile sent to the facility, such allowance to be used for the custody, care, maintenance, and any other services normally provided by the county to juveniles in the facility or shelter and which reflects all county expenditures in maintaining such juvenile, including a proportionate share of all buildings and grounds costs, personnel costs, including fringe benefits, administrative costs and all other direct and indirect costs.

(7) The governing body of a county whose juvenile detention facility or shelter has been prohibited from accepting new admissions, and whose juveniles have been assigned to other juvenile detention facilities or shelters, shall appropriate an amount to pay the county receiving such juveniles for all expenses incurred pursuant to paragraph (6) of this subsection.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 288

AN ACT concerning New Jersey Commission on Holocaust Education and amending P.L.1991, c.193.

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

1. Section 2 of P.L.1991, c.193 (C.18A:4A-2) is amended to read as follows:

C.18A:4A-2 New Jersey Commission on Holocaust Education.

2. a. The New Jersey Commission on Holocaust Education is created and established in the Executive Branch of the State Government. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated within the Department of Education, but notwithstanding this allocation, the commission shall be independent of any supervision or control by the department or any board or officer thereof.

The commission shall consist of 25 members, including the Commissioner of Education and the chair of the executive board of the Presidents' Council, serving *ex officio*, and 23 public members. Public members shall be appointed as follows: three public members shall be appointed by the President of the Senate; three public members shall be appointed by the Speaker of the General Assembly; and 17 public members shall be appointed by the Governor, no less than six of whom shall at the time of their appointment be members of the New Jersey Advisory Council on Holocaust Education, created pursuant to Executive Order No. 17 of 1982 and continued pursuant to Executive Order No. 87 of 1984, Executive Order No. 168 of 1987 and Executive Order No. 225 of 1990, and further continued pursuant to Executive Order No. 14 of 1990. The public members shall be residents of this State, chosen with due regard to broad geographic representation and ethnic diversity, who have served prominently as spokespersons for, or as leaders of organizations which serve members of religious, ethnic, national heritage or social groups which were subjected to genocide, torture, wrongful deprivation of liberty or property, officially imposed or sanctioned violence, and other forms of human rights violations and persecution at the hands of the Nazis and their collaborators during the Nazi era, or they shall be residents who are experienced in the field of Holocaust education.

b. Each public member of the commission shall serve for a term of three years, except that of the initial members so appointed: one member appointed by the President of the Senate, one member appointed by the Speaker of the General Assembly, and four members appointed by the

Governor shall serve for terms of one year; one member appointed by the President of the Senate, one member appointed by the Speaker of the General Assembly, and four members appointed by the Governor shall serve for terms of two years; and one member appointed by the President of the Senate, one member appointed by the Speaker of the General Assembly, and five members appointed by the Governor shall serve for terms of three years. Public members shall be eligible for reappointment. They shall serve until their successors are appointed and qualified, and the term of the successor of any incumbent shall be calculated from the expiration of the term of that incumbent. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

c. The members of the commission shall serve without compensation, but they shall be entitled to reimbursement for all necessary expenses incurred in the performance of their duties.

d. The commission shall annually elect a chairman from among its members. It shall meet upon the call of the chairman or of a majority of the commission members. The presence of a majority of the authorized membership of the commission shall be required for the conduct of official business.

e. The commission shall appoint an executive director, who shall serve at its pleasure and shall be a person qualified by training and experience to perform the duties of the office.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 289

AN ACT concerning local government financing of animal shelter and care facilities operated by certain nonprofit organizations, supplementing Title 4 of the Revised Statutes.

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

C.40A:2-3.1 Local governments, funding of animal shelter operated by nonprofit organization.

1. Notwithstanding the provisions of any other law to the contrary, and in addition to any other law authorizing these expenditures, a municipality or county may appropriate funds as a capital improvement pursuant to the "Local Bond Law," N.J.S. 40A:2-1 et seq., for the construction, by an organization organized as a not-for-profit as described in section 501(c)(3) of the

federal Internal Revenue Code of 1986, 26 U.S.C. s.501, and exempt from taxation under section 501(a) of the federal Internal Revenue Code of 1986, 26 U.S.C. s.501, of a facility on publicly owned land to shelter and care for abandoned and stray animals, provided that the facility is licensed as required pursuant to section 8 of P.L.1941, c.151 (C.4:19-15.8). Funds appropriated pursuant to this section shall be contributed or loaned to an organization described in this section only if there is a contract for services between the organization and the municipality or county; and provided further that any title or interest in the facility held by an organization shall revert to the municipality or county on whose publicly owned land the facility is constructed upon the termination of the contract.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 290

AN ACT concerning the use of certain lands acquired or developed by a local unit for recreation and conservation purposes and supplementing Title 13 of the Revised Statutes.

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

C.13:8A-56 Certain public parking lots, use for commuter parking.

1. a. Notwithstanding the provisions of section 13 of P.L.1961, c.45 (C.13:8A-13), section 13 of P.L.1971, c.419 (C.13:8A-31), section 13 of P.L.1975, c.155 (C.13:8A-47), or any rule or regulation adopted pursuant thereto to the contrary, a parking lot located on, and which is used to provide public access to, lands acquired or developed for recreation and conservation purposes by a local unit with financial assistance from the State in the form of a grant or loan of Green Acres bond funds, may also be used by the public as a designated commuter parking lot, and that additional use shall not be deemed to constitute a disposal or diversion of those lands pursuant to section 13 of P.L.1961, c.45 (C.13:8A-13), section 13 of P.L.1971, c.419 (C.13:8A-31), section 13 of P.L.1975, c.155 (C.13:8A-47), or any rule or regulation adopted pursuant thereto; provided that the Commissioner of Environmental Protection, after holding at least one public hearing in the municipality wherein the lands are located, has approved the additional use of the parking lot for commuter parking.

b. The commissioner shall grant the approval required pursuant to subsection a. of this section only if the commissioner finds that:

(1) the local unit has adopted an ordinance or resolution, as appropriate, designating the parking lot for dual use as a public park access and commuter parking lot, subject to the approval of the commissioner pursuant to this section;

(2) the parking lot was constructed prior to June 30, 1999;

(3) no Green Acres bond funds were used to pay for construction of the parking lot; and

(4) the additional use of the parking lot, and any improvements which may be made thereto, for commuter parking (a) in consultation with the Commissioner of Transportation, fulfill a compelling public need or yield a significant public benefit, (b) would not substantially inhibit use of the parking lot for public access to the lands for recreation and conservation purposes, and (c) would not substantially harm the recreation and conservation purposes for which the lands were acquired.

c. The expansion of any parking lot or the construction of any additional parking lot on lands acquired or developed for recreation and conservation purposes and for which an approval for a dual use public park access and commuter parking lot has been granted by the commissioner pursuant to this section shall be deemed to constitute a disposal or diversion of those lands pursuant to section 13 of P.L.1961, c.45 (C.13:8A-13), section 13 of P.L.1971, c.419(C.13:8A-31), or section 13 of P.L.1975, c.155 (C.13:8A-47), as the case may be.

d. The commissioner, after holding at least one public hearing in the municipality wherein the lands are located, may revoke any approval granted pursuant to this section if the facts or findings upon which the approval was based have changed to the extent that the requirements for approval as prescribed in this section are no longer met.

e. No improvements shall be made to any parking lot designated and approved for dual use as a public park access and commuter parking lot pursuant to this section without the approval of the commissioner. Such approval shall be granted only if the commissioner, after holding at least one public hearing in the municipality wherein the parking lot is located, finds that (1) the improvements meet the criteria set forth in paragraph (4) of subsection b. of this section, and (2) do not constitute an expansion of the parking lot.

f. For the purposes of this section:

"Commissioner" means the Commissioner of Environmental Protection;

"Green Acres bond funds" means proceeds from the sale of bonds pursuant to P.L.1961, c.46; P.L.1971, c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265; P.L.1989, c.183; P.L.1992, c.88;

or P.L.1995, c.204, for the purpose of providing State grants or loans to assist local units to meet the cost of acquiring or developing lands for recreation and conservation purposes;

"Local unit" means the same as that term is defined pursuant to section 3 of P.L.1961, c.45 (C.13:8A-3), section 3 of P.L.1971, c.419 (C.13:8A-21), or section 3 of P.L.1975, c.155 (C.13:8A-37); and

"Recreation and conservation purposes" means the same as that term is defined pursuant to section 3 of P.L.1961, c.45 (C.13:8A-3), section 3 of P.L.1971, c.419 (C.13:8A-21), or section 3 of P.L.1975, c.155 (C.13:8A-37).

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 291

AN ACT concerning charges on unsecured closed end loan agreements and amending P.L.1985, c.81.

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

1. Section 16 of P.L.1985, c.81 (C.17:3B-19) is amended to read as follows:

C.17:3B-19 Additional charges.

16. Additional charges. If the closed end loan agreement so provides, a lender may:

a. Charge and collect the actual costs of filing or recording the instrument of security on a secured loan, or notice or abstract thereof, if the filing or recording is authorized by law.

b. Charge and collect fees and charges on secured and unsecured loans, in addition to interest and fees and charges specifically permitted by P.L.1985, c.81 (C.17:3B-4 et seq.), in amounts as provided in the agreement or as established in the manner the agreement provides, such as, but not limited to, minimum charges, check charges and maintenance charges, and late charges except as may be specifically limited by P.L.1985, c.81 (C.17:3B-4 et seq.).

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 292

AN ACT concerning the "Main Street New Jersey" program in the Department of Community Affairs and supplementing P.L.2001, c.238 (C.52:27D-452 et seq.).

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

C.52:27D-454.1 UEZ funding assistance included for eligibility for "Main Street New Jersey" program.

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, a municipality designated as an urban enterprise zone pursuant to the provisions of P.L.1983, c.303 (C.52:27H-60 et seq.) shall be considered by the commissioner for assistance under the "Main Street New Jersey" program if such municipality includes financial assistance from its enterprise zone assistance fund account, established pursuant to section 29 of P.L. 1983, c.303 (C.52:27H-88), for the purpose of having an operating budget deemed adequate by the commissioner for a period of not less than three years and if such municipality is otherwise eligible for assistance pursuant to the provisions of section 3 of P.L.2001, c.238 (C.52:27D-454). Any proposal by such municipality for financial assistance from its enterprise zone assistance fund account, for the purposes of consideration by the commissioner for assistance under the "Main Street New Jersey" program, shall follow the procedures for approval that are established pursuant to the provisions of section 29 of P.L.1983, c.303 (C.52:27H-88).

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 293

AN ACT concerning certain acts of discrimination and amending P.L.1945, c.169.

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

1. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read as follows:

C.10:5-5 Definitions relative to discrimination.

5. As used in this act, unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" include only those unlawful practices and acts specified in section 11 of this act.

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of this act, and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies.

f. "Employee" does not include any individual employed in the domestic service of any person.

g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. "Division" means the "Division on Civil Rights" created by this act.

i. "Attorney General" means the Attorney General of the State of New Jersey or his representative or designee.

j. "Commission" means the Commission on Civil Rights created by this act.

k. "Director" means the Director of the Division on Civil Rights.

l. "A place of public accommodation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their

derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water, or in the air, any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry or affectional or sexual orientation in the admission of students.

m. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, in the sale, lease or rental of real property, from limiting admission to or giving preference to persons of the

same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under this act regarding discrimination on the basis of familial status apply with respect to housing for older persons.

o. "Real estate broker" includes a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesperson" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. "Disability" means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination,

blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

r. "Blind person" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist deaf persons or which is fitted with a special harness so as to be suitable as an aid to the mobility of a blind person, and is used by a blind person who has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind or deaf as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide dogs with training, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally or customarily permitted or invited.

w. "Deaf person" means any person whose hearing is so severely impaired that the person is unable to hear and understand normal conversational speech through the unaided ear alone, and who must depend primarily on a supportive device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. "Service dog" means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items. This term shall include a "seizure dog" trained to alert or otherwise assist persons subject to epilepsy or other seizure disorders.

ee. "Qualified Medicaid applicant" means an individual who is a qualified applicant pursuant to P.L. 1968, c.413 (C.30:4D-1 et seq.).

ff. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

gg. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. "Affectional or sexual orientation" means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.

ii. "Heterosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. "Homosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. "Bisexuality" means affectional, emotional or physical attraction or behavior which is directed towards persons of either gender.

ll. "Familial status" means being the natural parent of a child, the adoptive parent of a child, the foster parent of a child, having a "parent and child relationship" with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. "Housing for older persons" means housing:

(1) provided under any State program that the Attorney General determines is specifically designed and operated to assist elderly persons (as defined in the State program); or provided under any federal program that the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the federal program); or

(2) intended for, and solely occupied by persons 62 years of age or older; or

(3) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Attorney General shall adopt regulations which require at least the following factors:

(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

nn. "Genetic characteristic" means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose

an individual to a disease, disorder or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome.

oo. "Genetic information" means the information about genes, gene products or inherited characteristics that may derive from an individual or family member.

pp. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to identify a predisposing genetic characteristic.

qq. "Domestic partnership" means a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 294

AN ACT concerning Medicaid coverage of HIV drug resistance testing and amending P.L.1968, c.413.

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

1. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read as follows:

C.30:4D-6 Basic medical care and services.

6. a. Subject to the requirements of Title XIX of the federal Social Security Act, the limitations imposed by this act and by the rules and regulations promulgated pursuant thereto, the department shall provide medical assistance to qualified applicants, including authorized services within each of the following classifications:

- (1) Inpatient hospital services;
- (2) Outpatient hospital services;
- (3) Other laboratory and X-ray services;
- (4) (a) Skilled nursing or intermediate care facility services;

(b) Such early and periodic screening and diagnosis of individuals who are eligible under the program and are under age 21, to ascertain their physical or mental defects and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as

may be provided in regulations of the Secretary of the federal Department of Health and Human Services and approved by the commissioner;

(5) Physician's services furnished in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere.

As used in this subsection, "laboratory and X-ray services" includes HIV drug resistance testing, including, but not limited to, genotype assays that have been cleared or approved by the federal Food and Drug Administration, laboratory developed genotype assays, phenotype assays, and other assays using phenotype prediction with genotype comparison, for persons diagnosed with HIV infection or AIDS.

b. Subject to the limitations imposed by federal law, by this act, and by the rules and regulations promulgated pursuant thereto, the medical assistance program may be expanded to include authorized services within each of the following classifications:

(1) Medical care not included in subsection a.(5) above, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice, as defined by State law;

(2) Home health care services;

(3) Clinic services;

(4) Dental services;

(5) Physical therapy and related services;

(6) Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(7) Optometric services;

(8) Podiatric services;

(9) Chiropractic services;

(10) Psychological services;

(11) Inpatient psychiatric hospital services for individuals under 21 years of age, or under age 22 if they are receiving such services immediately before attaining age 21;

(12) Other diagnostic, screening, preventive, and rehabilitative services, and other remedial care;

(13) Inpatient hospital services, nursing facility services and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;

(14) Intermediate care facility services;

(15) Transportation services;

(16) Services in connection with the inpatient or outpatient treatment or care of drug abuse, when the treatment is prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center approved by the Department of Health and Senior Services pursuant

to P.L.1970, c.334 (C.26:2G-21 et seq.) and whose staff includes a medical director, and limited to those services eligible for federal financial participation under Title XIX of the federal Social Security Act;

(17) Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary of the federal Department of Health and Human Services, and approved by the commissioner;

(18) Comprehensive maternity care, which may include: the basic number of prenatal and postpartum visits recommended by the American College of Obstetrics and Gynecology; additional prenatal and postpartum visits that are medically necessary; necessary laboratory, nutritional assessment and counseling, health education, personal counseling, managed care, outreach and follow-up services; treatment of conditions which may complicate pregnancy; and physician or certified nurse-midwife delivery services;

(19) Comprehensive pediatric care, which may include: ambulatory, preventive and primary care health services. The preventive services shall include, at a minimum, the basic number of preventive visits recommended by the American Academy of Pediatrics;

(20) Services provided by a hospice which is participating in the Medicare program established pursuant to Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.). Hospice services shall be provided subject to approval of the Secretary of the federal Department of Health and Human Services for federal reimbursement;

(21) Mammograms, subject to approval of the Secretary of the federal Department of Health and Human Services for federal reimbursement, including one baseline mammogram for women who are at least 35 but less than 40 years of age; one mammogram examination every two years or more frequently, if recommended by a physician, for women who are at least 40 but less than 50 years of age; and one mammogram examination every year for women age 50 and over.

c. Payments for the foregoing services, goods and supplies furnished pursuant to this act shall be made to the extent authorized by this act, the rules and regulations promulgated pursuant thereto and, where applicable, subject to the agreement of insurance provided for under this act. Said payments shall constitute payment in full to the provider on behalf of the recipient. Every provider making a claim for payment pursuant to this act shall certify in writing on the claim submitted that no additional amount will be charged to the recipient, his family, his representative or others on his behalf for the services, goods and supplies furnished pursuant to this act.

No provider whose claim for payment pursuant to this act has been denied because the services, goods or supplies were determined to be medically unnecessary shall seek reimbursement from the recipient, his family, his representative or others on his behalf for such services, goods and sup-

plies provided pursuant to this act; provided, however, a provider may seek reimbursement from a recipient for services, goods or supplies not authorized by this act, if the recipient elected to receive the services, goods or supplies with the knowledge that they were not authorized.

d. Any individual eligible for medical assistance (including drugs) may obtain such assistance from any person qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability on a prepayment basis), who undertakes to provide him such services.

No copayment or other form of cost-sharing shall be imposed on any individual eligible for medical assistance, except as mandated by federal law as a condition of federal financial participation.

e. Anything in this act to the contrary notwithstanding, no payments for medical assistance shall be made under this act with respect to care or services for any individual who:

(1) Is an inmate of a public institution (except as a patient in a medical institution); provided, however, that an individual who is otherwise eligible may continue to receive services for the month in which he becomes an inmate, should the commissioner determine to expand the scope of Medicaid eligibility to include such an individual, subject to the limitations imposed by federal law and regulations, or

(2) Has not attained 65 years of age and who is a patient in an institution for mental diseases, or

(3) Is over 21 years of age and who is receiving inpatient psychiatric hospital services in a psychiatric facility; provided, however, that an individual who was receiving such services immediately prior to attaining age 21 may continue to receive such services until he reaches age 22. Nothing in this subsection shall prohibit the commissioner from extending medical assistance to all eligible persons receiving inpatient psychiatric services; provided that there is federal financial participation available.

f. (1) A third party as defined in section 3 of P.L. 1968, c.413 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in this or another state when determining the person's eligibility for enrollment or the provision of benefits by that third party.

(2) In addition, any provision in a contract of insurance, health benefits plan or other health care coverage document, will, trust agreement, court order or other instrument which reduces or excludes coverage or payment for health care-related goods and services to or for an individual because of that individual's actual or potential eligibility for or receipt of Medicaid benefits shall be null and void, and no payments shall be made under this act as a result of any such provision.

(3) Notwithstanding any provision of law to the contrary, the provisions of paragraph (2) of this subsection shall not apply to a trust agreement that is established pursuant to 42 U.S.C. s.1396p(d)(4)(A) or (C) to supplement and augment assistance provided by government entities to a person who is disabled as defined in section 1614(a)(3) of the federal Social Security Act (42 U.S.C. s.1382c (a)(3)).

g. The following services shall be provided to eligible medically needy individuals as follows:

(1) Pregnant women shall be provided prenatal care and delivery services and postpartum care, including the services cited in subsection a.(1), (3) and (5) of this section and subsection b.(1)-(10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(2) Dependent children shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1), (2), (3), (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(3) Individuals who are 65 years of age or older shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(4) Individuals who are blind or disabled shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(5) (a) Inpatient hospital services, subsection a.(1) of this section, shall only be provided to eligible medically needy individuals, other than pregnant women, if the federal Department of Health and Human Services discontinues the State's waiver to establish inpatient hospital reimbursement rates for the Medicare and Medicaid programs under the authority of section 601(c)(3) of the Social Security Act Amendments of 1983, Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Inpatient hospital services may be extended to other eligible medically needy individuals if the federal Department of Health and Human Services directs that these services be included.

(b) Outpatient hospital services, subsection a.(2) of this section, shall only be provided to eligible medically needy individuals if the federal Department of Health and Human Services discontinues the State's waiver to establish outpatient hospital reimbursement rates for the Medicare and Medicaid programs under the authority of section 601(c)(3) of the Social Security Act Amendments of 1983, Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital services may be extended to all or to certain medically

needy individuals if the federal Department of Health and Human Services directs that these services be included. However, the use of outpatient hospital services shall be limited to clinic services and to emergency room services for injuries and significant acute medical conditions.

(c) The division shall monitor the use of inpatient and outpatient hospital services by medically needy persons.

h. In the case of a qualified disabled and working individual pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the only medical assistance provided under this act shall be the payment of premiums for Medicare part A under 42 U.S.C. ss.1395i-2 and 1395r.

i. In the case of a specified low-income Medicare beneficiary pursuant to 42 U.S.C. s.1396a(a)10(E)iii, the only medical assistance provided under this act shall be the payment of premiums for Medicare part B under 42 U.S.C. s.1395r as provided for in 42 U.S.C. s.1396d(p)(3)(A)(ii).

j. In the case of a qualified individual pursuant to 42 U.S.C. s.1396a(aa), the only medical assistance provided under this act shall be payment for authorized services provided during the period in which the individual requires treatment for breast or cervical cancer, in accordance with criteria established by the commissioner.

2. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act.

3. This act shall take effect on the 180th day after enactment, except that the Commissioner of Human Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 14, 2004.

CHAPTER 295

AN ACT encouraging the preservation of multifamily housing, amending N.J.S.2B:12-20, P.L.1985, c.222, and supplementing Title 2A of the New Jersey Statutes and P.L.1983, c.530 (C.55:14K-1 et seq.), and repealing various sections of statutory law.

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

C.2A:42-114 Short title.

1. This act shall be known and may be cited as the "Multifamily Housing Preservation and Receivership Act."

C.2A:42-115 Findings, declarations relative to multifamily housing.

2. The Legislature finds and declares that:

a. Many citizens of New Jersey are adversely affected by blighted residential property, including both those who live in buildings that fail to meet adequate standards for health, safety and welfare or fail to meet reasonable housing code standards, and those who live in proximity to such buildings;

b. Substandard and deteriorating buildings are a public safety threat and nuisance, and their blighting effect diminishes health, public safety and property values in the neighborhoods in which they are located;

c. Left to deteriorate over time, these substandard and deteriorating buildings are likely to be abandoned, thereby endangering neighborhood residents and resulting in increased costs to the municipalities in which they are situated;

d. The abandonment of substandard buildings furthermore results in the displacement of lower income tenants, thereby increasing the demand for affordable housing, which is already in short supply, and exacerbating homelessness faced by the citizens of New Jersey;

e. The number of distressed multifamily buildings in the State which could be maintained as safe, affordable housing could be significantly increased if adequate public resources were made available to alleviate negative conditions in the rental housing stock throughout the State;

f. While it is important to provide incentives for landlords to better maintain and improve their properties, it is recognized that there are situations in which it is necessary for other parties to intervene in the operation and maintenance of multifamily buildings, a procedure known as receivership, in order to ensure that they are not abandoned, and that they are maintained as sound, affordable housing, consistent with codes and safety requirements;

g. When receivership becomes necessary, receivership activities and the implementation of receivership plans may be supported by grants and loans to be made available out of a newly-created Preservation Loan Revolving Fund, as provided hereunder; and

h. In order to ensure that the interests of all parties are adequately protected, it is essential that State law provide clear standards and direction to guide the parties with respect to all aspects of receivership.

C.2A:42-116 Definitions relative to multifamily housing.

3. As used in P.L.2003, c.295 (C.2A:42-114 et al.):

"Agency" means the New Jersey Housing and Mortgage Finance Agency established under section 4 of P.L.1983, c.530 (C.55:14K-4);

"Building" means any building or structure and the land appurtenant thereto in which at least half of the net square footage of the building is used for residential purposes; and shall not include any one to four unit residential building in which the owner occupies one of the units as his or her principal residence;

"Code" means any housing, property maintenance, fire or other public safety code applicable to a residential building, whether enforced by the municipality or by a State agency;

"Commissioner" means the Commissioner of Community Affairs;

"Department" means the Department of Community Affairs;

"Lienholder" or "mortgage holder" means any entity holding a note, mortgage or other interest secured by the building or any part thereof;

"Owner" means the holder or holders of title to a residential building;

"Party in interest" means: (1) any mortgage holder, lien holder or secured creditor of the owner; (2) any tenant living in the building; (3) any entity designated by more than 50 percent of the tenants living in the building as their representative; (4) the public officer; or (5) a non-profit entity providing community services in the municipality in which the building is located;

"Plaintiff" means a party in interest or a qualified entity that files a complaint pursuant to section 4 of P.L.2003, c.295 (C.2A:42-117);

"Public officer" means an officer of the municipality appropriately qualified to carry out the responsibilities set forth in P.L.2003, c.295 (C.2A:42-114 et al.) and designated by resolution of the governing body of the municipality in which the building is located, except that in municipalities organized under the "mayor-council plan" of the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), the public officer shall be designated by the mayor;

"Qualified entity" means any person or entity registered with the department on the basis of having demonstrated knowledge and substantial experience in the operation, maintenance and improvement of residential buildings;

"Tenant" means a household that legally occupies a dwelling unit in a residential building.

C.2A:42-117 Action to appoint receiver.

4. A summary action or otherwise to appoint a receiver to take charge and manage a building may be brought by a party in interest or qualified entity in the Superior Court in the county in which the building is situated. Any receiver so appointed shall be under the direction and control of the court and shall have full power over the property and may, upon appointment and subject to the provisions of P.L.2003, c.295 (C.2A:42-114 et al.), com-

mence and maintain proceedings for the conservation, protection or disposal of the building, or any part thereof, as the court may deem proper.

A building shall be eligible for receivership if it meets one of the following criteria:

a. The building is in violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants as of the date of the filing of the complaint with the court, and the violation or violations have persisted, unabated, for at least 90 days preceding the date of the filing of the complaint with the court; or

b. The building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court and the owner has failed to take action as set forth in section 9 of P.L.2003, c.295 (C.2A:42-122).

A court, upon determining that the conditions set forth in subsection a. or b. of this section exist, based upon evidence provided by the plaintiff, shall appoint a receiver, with such powers as are herein authorized or which, in the court's determination, are necessary to remove or remedy the condition or conditions that are a serious threat to the life, health or safety of the building's tenants or occupants.

C.2A:42-118 Contents of complaint.

5. A complaint submitted to the court shall include a statement of the grounds for relief and:

a. Documentation of the conditions that form the basis for the complaint;

b. Evidence that the owner received notice of the conditions that form the basis for the complaint, and failed to take adequate and timely action to remedy those conditions; and

c. With respect to any building that contains non-residential facilities, including but not limited to commercial or office floor space, the complaint shall provide explicit justification for the inclusion of the non-residential facilities in the scope of the receivership order; in the absence of such justification, the court shall exclude such facilities from the scope of the receiver's duties and powers.

The complaint may include a recommendation of the receiver to be appointed.

C.2A:42-119 Serving of complaint.

6. The plaintiff shall serve the complaint and any affidavits or certifications that accompanied the complaint upon the parties in interest, the current

owner of the property, and all mortgage holders and lienholders of record determined by a title search and in accordance with the Rules of Court.

Unless tenants have been provided with written notice to the contrary or the plaintiff has knowledge to the contrary, the business address at which the owner or an agent of the owner may be served shall be that address provided by the owner to the commissioner in registering the property under section 12 of P.L.1967, c.76 (C.55:13A-12).

The plaintiff shall mail notification to the public officer and the agency by registered mail or certified mail, return receipt requested, of its intent to initiate action under the provisions of P.L.2003, c.295 (C.2A:42-114 et al.) on or before the tenth day prior to service of the complaint on the owner and parties in interest. If no municipal officer has been designated by the municipality for the purposes of P.L.2003, c.295 (C.2A:42-114 et al.), the plaintiff shall mail the notice to the municipal clerk.

C.2A:42-120 Receipt of notice, determination of ownership.

7. Upon receipt of notice given by a plaintiff in a receivership proceeding pursuant to section 6 of P.L.2003, c.295 (C.2A:42-119), the agency shall forthwith determine whether the building is owned by a limited partnership established pursuant to an allocation of low income housing tax credits by the agency or any other project over which the agency has regulatory control, and, if the building is owned by such a limited partnership, shall, within 30 days of receiving notice, provide a copy of that notice to the limited partner or partners of the limited partnership by registered mail or certified mail, return receipt requested.

A limited partner in a limited partnership established pursuant to an allocation of low income housing tax credits by the agency shall have the same rights and remedies under provisions of P.L.2003, c.295 (C.2A:42-114 et al.) as a lienholder.

C.2A:42-121 Action of court relative to complaint.

8. a. The court shall act upon any complaint submitted pursuant to section 4 of P.L.2003, c.295 (C.2A:42-117) in a summary manner;

b. At the discretion of the court, any party in interest may intervene in the proceeding and be heard with regard to the complaint, the requested relief or any other matter which may come before the court in connection with the proceedings;

c. Any party in interest may present evidence to support or contest the complaint at the hearing.

C.2A:42-122 Opposition of owner to relief sought in complaint.

9. a. If the owner opposes the relief sought in the complaint brought under subsection b. of section 4 of P.L.2003, c.295 (C.2A:42-117) and

demonstrates by a preponderance of the evidence that repairs were made in timely fashion to each of the violations cited, that the repairs were made to an appropriate standard of workmanship and materials, and that the overall level of maintenance and provision of services to the building is of adequate standard, the court may dismiss the complaint.

b. If the complaint is brought by a tenant of the building which is the subject of the complaint and that tenant is in default of any material obligation under New Jersey landlord-tenant law, the court may dismiss the complaint.

c. If the court finds that the preponderance of the violations that are the basis of a complaint brought under subsection b. of section 4 of P.L.2003, c.295 (C.2A:42-117) are of a minor nature and do not impair the health, safety or general welfare of the tenants or neighbors of the property, the court may dismiss the complaint.

d. Within 10 days of filing the complaint, the plaintiff shall file a notice of lis pendens with the county recording officer of the county within which the building is located.

C.2A:42-123 Appointment of receiver, other relief.

10. a. If the court determines, after its summary hearing, that the grounds for relief set forth pursuant to section 5 of P.L.2003, c.295 (C.2A:42-118) have been established, the court may appoint a receiver and grant such other relief as may be determined to be necessary and appropriate. The court shall select as the receiver the mortgageholder, lienholder or a qualified entity, as defined pursuant to section 3 of P.L.2003, c.295 (C.2A:42-116). If the court cannot identify a receiver, the court may appoint any party who, in the judgment of the court, may not have registered with the department pursuant to section 31 of P.L.2003, c.295 (C.2A:42-142), but otherwise fulfills the qualifications of a qualified entity.

b. If the court determines, after its summary hearing, that the grounds for relief set forth pursuant to section 5 of P.L.2003, c.295 (C.2A:42-118) have been established, but the owner presents a plan in writing to the court demonstrating that the conditions leading to the filing of the complaint will be abated within a reasonable period, which plan is found by the court to be reasonable, then the court may enter an order providing that in the event the conditions are not abated by a specific date, including the completion of specific remedial activities by specific dates, or if the conditions recur within a specific period established by the court, then an order granting the relief as requested in the complaint shall be granted.

The court may require the owner to post a bond in such amount that the court, in consultation with the party bringing the complaint and the public

officer, determines to be reasonable, which shall be forfeit if the owner fails to meet the conditions of the order.

c. Any sums advanced or incurred by a mortgage holder or lienholder acting as receiver pursuant to this section for the purpose of making improvements to the property, including court costs and reasonable attorneys fees, may be added to the unpaid balance due said mortgage holder or lienholder subject to interest at the same rate set forth in the note or security agreement.

d. Nothing in this section shall be deemed to relieve the owner of the building of any obligation the owner or any other person may have for the payment of taxes or other municipal liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the appointment of the receiver.

e. The appointment of a receiver shall not suspend any obligation the owner may have as of the date of the appointment of the receiver for payment of any operating or maintenance expense associated with the building, whether or not billed at the time of appointment. Any such expenses incurred after the appointment of the receiver shall be the responsibility of the receiver.

C.2A:42-124 Denial of rights, remedies afforded lien, mortgage holders.

11. Notwithstanding any provision to the contrary pursuant to P.L.2003, c.295 (C.2A:42-114 et al.), a court may in its discretion deny a lienholder or mortgage holder of any or all rights or remedies afforded lienholders and mortgage holders under P.L.2003, c.295 (C.2A:42-114 et al.), if it finds that the owner of the building owns or controls more than a 50% interest in, or effective control of, the lienholder or mortgage holder, or that the familial or business relationship between the lienholder or mortgage holder and the owner precludes a separate interest on the part of the lienholder or mortgage holder.

C.2A:42-125 Submission of plan by receiver.

12. Within 60 days following the order appointing a receiver pursuant to subsection a. of section 10 of P.L.2003, c.295 (C.2A:42-123), the receiver shall submit a plan for the operation and improvement of the building to the court and provide a copy of the plan to the owner, all parties in interest which participated in the hearing and the clerk of the municipality in which the building is situated. The plan shall include an enumeration of the insurance coverage to be purchased by the receiver, including surety bonds in an amount sufficient to guarantee compliance with the terms and conditions of the receivership and in accordance with rules and regulations adopted by the commissioner pursuant to section 31 of P.L.2003, c.295 (C.2A:42-142).

The court shall approve or disapprove the plan with or without modifications.

The receiver's plan, to the extent reasonably feasible, shall take into account a recent appraisal of the property and income and expense statements for at least the preceding two years, and shall include:

- a. an estimate of the cost of the labor, materials and any other costs that are required to bring the property up to applicable codes and standards and abate any nuisances that gave rise to the appointment of the receiver pursuant to section 10 of P.L.2003, c.295 (C.2A:42-123);
- b. the estimated income and expenses of the building and property after the completion of the repairs and improvements;
- c. the cost of paying taxes and other municipal charges; and
- d. the terms, conditions and availability of any financing that is necessary in order to allow for the timely completion of the work outlined in subsection a. of this section.

The owner shall, to the extent such information is available, expeditiously provide the receiver with such income and expense statements. If the receiver's plan was submitted at the time of the hearing, the receiver may amend the plan subsequent to that hearing, and submit a revised plan to the court pursuant to this section.

The commissioner may be called upon by the court in any proceeding involving the receivership.

C.2A:42-126 Bond, surety, insurance posted by receiver, removal of receiver.

13. Upon appointment, the receiver shall post a bond or other such surety or insurance in accordance with the plan approved by the court pursuant to section 12 of P.L.2003, c.295 (C.2A:42-125).

The receiver shall take possession of the building and any other property subject to the receivership order immediately after posting the required bond, surety or insurance and, subject to the approval of the court of the bond, surety and insurance, shall immediately be authorized to exercise all powers delegated by P.L.2003, c.295 (C.2A:42-114 et al.), except that the receiver shall not undertake major non-emergent improvements to the property prior to approval of the receiver's plan by the court.

Any receiver may be removed by the court at any time upon the request of the receiver or upon a showing by a party in interest that the receiver is not carrying out its responsibilities under P.L.2003, c.295 (C.2A:42-114 et al.). The court may hold a hearing prior to removal of a receiver under this section.

C.2A:42-127 Filing, continuation of foreclosure unaffected.

14. a. Neither the filing of a complaint under section 4 of P.L.2003, c.295 (C.2A:42-117) nor the appointment of a receiver under subsection a. of section 10 of P.L.2003, c.295 (C.2A:42-123) shall stay the filing or continua-

tion of any action to foreclose a mortgage or lien on the building or to sell the property for delinquent taxes or unpaid municipal liens.

b. In the event that ownership of the building changes as a result of foreclosure while a receiver is in possession, including possession by the municipality pursuant to a tax foreclosure action, the property shall remain subject to the receivership and the receiver shall remain in possession and shall retain all powers delegated under this action unless and until the receivership is terminated under the provisions of P.L.2003, c.295 (C.2A:42-114 et al.).

C.2A:42-128 Powers, duties of receiver.

15. The receiver shall have all powers and duties necessary or desirable for the efficient operation, management and improvement of the building in order to remedy all conditions constituting grounds for receivership under P.L.2003, c.295 (C.2A:42-114 et al.). Such powers and duties shall include the power to:

a. Take possession and control of the building, appurtenant land and any personal property of the owner used with respect to the building, including any bank or operating account specific to the building;

b. Collect rents and all outstanding accounts receivable, subject to the rights of lienholders except where affected by court action pursuant to any of the provisions of P.L.2003, c.295 (C.2A:42-114 et al.);

c. Pursue all claims or causes of action of the owner with respect to the building and other property subject to the receivership;

d. Contract for the repair and maintenance of the building on reasonable terms, including the provision of utilities to the building. If the receiver falls within the definition of a contracting unit pursuant to section 2 of P.L.1971, c.198 (C.40A:11-2), any contract entered into by the receiver shall not be subject to any legal advertising or bidding requirements, but the receiver shall solicit at least three bids or proposals, as appropriate, with respect to any contract in an amount greater than \$2,500. The receiver may enter into contracts or agreements with tenants or persons who are members of the receiver entity, as the case may be, provided that all such contracts or agreements shall be appropriately documented, and included in the receiver's expenses under P.L.2003, c.295 (C.2A:42-114 et al.). In the event that the receiver contracts for any service with an entity with which the receiver has an identity of interest relationship, it shall first disclose that relationship to the court, the owner and the parties in interest;

e. Borrow money and incur debt in accordance with the provisions of section 17 of P.L.2003, c.295 (C.2A:42-130);

f. Purchase materials, goods and supplies to operate, maintain, repair and improve the building;

- g. Enter into new rental contracts and leases for vacant units and renew existing rental contracts on reasonable terms for periods not to exceed one year;
- h. Affirm, renew or enter into contracts for insurance coverage on the building;
- i. Engage and, subject to court approval, pay legal, accounting, appraisal and other professionals to aid in carrying out the purposes of the receivership;
- j. Evict or commence eviction proceedings against tenants for cause when necessary and prudent, notwithstanding the condition of the building; and
- k. Sell the building in accordance with the provisions of P.L.2003, c.295 (C.2A:42-114 et al.).

C.2A:42-129 Responsibilities of receiver in possession of the building.

16. While in possession of the building, the receiver shall:

- a. Maintain, safeguard, and insure the building;
- b. Apply all revenue generated from the building consistent with the purposes of P.L.2003, c.295 (C.2A:42-114 et al.) and the provisions of the plan submitted to and approved by the court. In the case of an officer or agent of a municipality acting as a receiver pursuant to the provisions of section 1 of P.L.1942, c.54 (C.54:5-53.1), no revenue shall be applied to any arrears in property taxes or other municipal liens until or unless the municipal officer or agent finds that any material conditions found to exist by the court pursuant to section 10 of P.L.2003, c.295 (C.2A:42-123) have been abated, and that the building has remained free of any such conditions for a period of no less than six months of that certification;
- c. Implement the plan and, to the extent the receiver determines that any provision of the plan cannot be implemented, submit amendments to the plan to the court, with notice to the parties in interest and the owner;
- d. Submit such reports as the court may direct and submit a copy of those reports to the parties in interest and the owner. Such reports may include:
 - (1) a copy of any contract entered into by the receiver regarding repair or improvement of the building, including any documentation required under subsection d. of section 15 of P.L.2003, c.295 (C.2A:42-128);
 - (2) a report of the lease and occupancy status of each unit in the building, and any actions taken with respect to any tenant or lease;
 - (3) an account of the disposition of all revenues received from the building;
 - (4) an account of all expenses and improvements;
 - (5) the status of the plan and any amendments thereto;

(6) a description of actions proposed to be taken during the next six months with respect to the building; and

(7) itemization of any fees and expenses that the receiver incurred for which it is entitled to payment pursuant to subsection a. of section 18 of P.L.2003, c.295 (C.2A:42-131), which were not paid during the period covered by the report, or which have remained unpaid since the beginning of the receivership.

C.2A:42-130 Receiver may borrow money, incur indebtedness.

17. a. The receiver may borrow money and incur indebtedness in order to preserve, insure, manage, operate, repair, improve, or otherwise carry out its responsibilities under the terms of the receivership.

b. With the approval of the court, after notice to the owner and all parties in interest, the receiver may secure the payment of any borrowing or indebtedness under subsection a. of this section by a lien or security interest in the building or other assets subject to the receivership.

c. Where the borrowing or indebtedness is for the express purpose of making improvements to the building or other assets subject to the receivership, the court, after notice to the owner and all parties in interest, may authorize the receiver to grant a lien or security interest not in excess of the amount necessary for the improvements with priority over all other liens or mortgages, except for municipal liens. Prior to granting the receiver's lien priority over other liens or mortgages, the court shall find (1) that the receiver sought to obtain the necessary financing from the senior lienholder, which declined to provide such financing on reasonable terms; (2) that the receiver sought to obtain a voluntary subordination from the senior lienholder, which refused to provide such subordination; and (3) that lien priority is necessary in order to induce another lender to provide financing on reasonable terms. No lien authorized by the court shall take effect unless recorded in the recording office of the county in which the building is located.

d. For the purposes of this section, the cost of improvements shall include reasonable non-construction costs such as architectural fees or building permit fees customarily included in the financing of the improvement or rehabilitation of residential property incurred by the receiver in connection with the improvements.

C.2A:42-131 Receiver entitled to necessary expenses, reasonable fee.

18. a. The receiver shall be entitled to necessary expenses and to a reasonable fee, to be determined by the court. The expenses incurred by a receiver in removing or remedying a condition pursuant to P.L.2003, c.295 (C.2A:42-114 et al.) shall be met by the rents collected by the receiver or any other moneys made available for those purposes.

b. Nothing in P.L.2003, c.295 (C.2A:42-114 et al.) shall be deemed to relieve the owner of the building of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.

c. The activities of the receiver being appropriate and necessary to carry out a public purpose, the personnel, facilities, and funds of the municipality may be made available to the receiver at the discretion of the municipality for the purpose of carrying out the duties as receiver and the cost of those services shall be deemed a necessary expense of the receiver, which shall reimburse the municipality to the extent that funds are reasonably available for that purpose.

d. If the party in interest bringing a receivership action pursuant to section 4 of P.L.2003, c.295 (C.2A:42-117) is the public officer, the municipality shall be entitled to its costs in filing an application to the court and reasonable attorney fees, to be determined by the court, which may be a lien against the premises and collectible as otherwise provided under law.

C.2A:42-132 Release of outstanding municipal liens.

19. Upon request by the receiver and following notice by the receiver to the owner of the property, any municipality may, by order of the county board of taxation, release any outstanding municipal liens on any property subject to a receivership order under P.L.2003, c.295 (C.2A:42-114 et al.). In responding to such requests, the board shall balance the effect of releasing the lien on the municipality's finances with its effect on the preservation of the building as sound affordable housing. The owner of the property shall be personally liable for payment of the tax or other municipal charge secured by the lien.

C.2A:42-133 Order for sale of building.

20. Upon application of the receiver, the court may order the sale of the building if it finds that:

a. Notice was given to each current record owner of the building, each mortgagee or lienholder of record, and any other party in interest;

b. The receiver has been in control of the building for more than one year at the time of application and the owner has not successfully petitioned for reinstatement under section 24 of P.L.2003, c.295 (C.2A:42-137); and

c. The sale would promote the sustained maintenance of the building as sound, affordable housing, consistent with codes and safety requirements.

C.2A:42-134 Manner in which building sold, alternatives.

21. In its application to the court, the receiver shall specify the manner in which it proposes the building to be sold, which alternatives shall include, but not be limited to the following:

- a. Sale on the open market to an entity qualified to own and operate multifamily rental property;
- b. Sale at a negotiated price to a not-for-profit entity qualified to own and operate multifamily rental property;
- c. Sale to an entity for the purpose of conversion of the property to condominium or cooperative ownership pursuant to the provisions of "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), provided that that option shall not be approved except with the approval in writing of a majority of the tenants of the building, and provided further that, notwithstanding any provision of "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), no tenant in residence prior to the date the plan of conversion is approved by the court shall be subject to eviction by reason of that conversion; or
- d. In the case of a one to four family building, sale to a household that will occupy one of the units as an owner occupant, which may be a sitting tenant.

C.2A:42-135 Dismissal of receiver's application to sell property.

22. a. Upon application by the receiver to sell the property the owner or any party in interest may seek to have the receiver's application to sell the property dismissed and the owner's rights reinstated upon a showing that the owner meets all of the conditions set forth in section 25 of P.L.2003, c.295 (C.2A:42-138) and such other conditions that the court may establish. In setting the conditions for reinstatement, the court shall invite recommendations from the receiver.

b. In connection with the sale, the court may authorize the receiver to sell the building free and clear of liens, claims and encumbrances in which event, all such liens, claims and encumbrances, including tax and other municipal liens, shall be transferred to the proceeds of sale with the same priority as existed prior to resale in accordance with section 23 of P.L.2003, c.295 (C.2A:42-136).

C.2A:42-136 Sale of property.

23. Upon approval by the court, the receiver shall sell the property on such terms and at such price as the court shall approve, and may place the proceeds of sale in escrow with the court, except that unpaid municipal liens shall be paid from the proceeds of the sale. The court shall order a distribution of the proceeds of sale after paying court costs in the following order of priority:

- a. The reasonable costs and expenses of sale actually incurred;
- b. Municipal liens pursuant to R.S.54:5-9;

c. Repayment of principal and interest on any borrowing or indebtedness incurred by the receiver and granted priority lien status pursuant to subsection c. of section 17 of P.L.2003, c.295 (C.2A:42-130);

d. Other valid liens and security interests, including governmental liens, in accordance with their priority, including any costs and expenses incurred by the municipality as a receiver, but with respect to non-governmental liens, those duly recorded prior to the filing of the lis pendens notice by the receiver;

e. Any fees and expenses of the receiver not otherwise reimbursed during the pendency of the receivership in connection with the sale or the operation, maintenance and improvement of the building and documented by the receiver as set forth in paragraph (7) of subsection d. of section 16 of P.L.2003, c.295 (C.2A:42-129);

f. Any costs and expenses incurred by parties in interest in petitioning the court for receivership; and

g. Any accounts payable or other unpaid obligations to third parties from the receivership.

Those proceeds which remain after the distribution set forth in subsections a. through g. of this section shall be remitted to the owner.

C.2A:42-137 Petition for termination of receivership by owner.

24. The owner may petition for termination of the receivership and reinstatement of the owner's rights at any time by providing notice to all parties in interest, unless the court shall establish a minimum duration for the receivership in the order appointing the receiver, which minimum duration shall not exceed one year. The owner shall provide timely notice of the petition to the receiver and to all parties in interest. The court shall schedule a hearing on any such petition.

Prior to holding a hearing on the owner's petition, the court shall request a report from the receiver with its recommendations for action with respect to the owner's petition.

C.2A:42-138 Granting of owner's petition.

25. After reviewing the receiver's recommendations and holding a hearing, the court may grant the owner's petition if it finds that:

a. The owner's petition offers credible assurances that those elements of the plan which remain will be achieved by the owner within the time frame consistent with the plan submitted by the receiver and approved by the court;

b. The owner has paid or deposits with the court all funds required to meet all obligations of the receivership, including all fees and expenses of the receiver, except as provided in subsection c. of this section;

c. The owner agrees to assume all legal obligations, including repayment of indebtedness incurred by the receiver for repairs and improvements to the building resulting from the receivership;

d. The owner has paid all municipal property taxes, other municipal liens, and costs incurred by the municipality in connection with bringing the receivership action;

e. The owner posts a bond or other security in an amount determined to be reasonable by the court in consultation with the receiver and the public officer, but not in excess of 50% of the fair market value of the property, which shall be forfeit in the event of any future code violation materially affecting the health or safety of tenants or the structural or functional integrity of the building. Forfeiture shall be in the form of a summary proceeding initiated by the municipal officer, who shall provide evidence that such a code violation has occurred and has not been abated within 48 hours of notice, or such additional period of time as may be allowed by the court for good cause, and shall be in the amount of 100 percent of the cost of abating the violation for the first violation, 150 percent of the cost of abating the violation for the second violation, and 200 percent of the cost of abating the violation for any subsequent violation. The owner may seek approval of the court to be relieved of this requirement after five years, which shall be granted if the court finds that the owner has maintained the property in good repair during that period, that no material violations affecting the health and safety of the tenants have occurred during that period, and that the owner has remedied other violations in a timely and expeditious fashion;

f. The court may waive the requirement for a bond or other security for good cause, where it finds that such a waiver will not impair the rights or interests of the tenants of the building;

g. The reinstatement of the owner shall be in the interest of the public, taking into account the prior history of the building and other buildings within the municipality currently or previously controlled by the owner;

h. The court may establish additional requirements as conditions of reinstatement of the owner's rights as it determines reasonable and necessary to protect the interest of the tenants and the residents of the neighborhood;

i. Where the owner has conveyed the property to another entity during the pendency of the receivership, and the petition for reinstatement is brought by the new owner, the new owner shall be subject to all of the provisions of this section, unless the court finds compelling grounds that the public interest will be better served by a modification of any of these provisions; and

j. Where the new owner is a lienholder that obtained the property through foreclosure, or through grant of a deed in lieu of foreclosure, that owner shall not be subject to the provisions of this section, but may seek to

terminate the receivership by filing a petition for termination of the receivership pursuant to section 27 of P.L.2003, c.295 (C.2A:42-140).

C.2A:42-139 Conditions for reinstatement of owner's rights.

26. a. The court may require as a condition of reinstatement of the owner's rights that the receiver or other qualified entity remain in place as a monitor of the condition and management of the property for such period as the court may determine, and may require such reports at such intervals as it deems necessary and appropriate from the monitor. The court may require the owner to pay a fee to the monitor in such amount as the court may determine.

b. In the event of the owner's failure to comply with the conditions established for reinstatement of the owner's rights, or evidence of recurrence of any of the conditions for receivership set forth in section 4 of P.L.2003, c.295 (C.2A:42-117), the receiver, monitor or any party in interest may petition the court for reinstatement of the receivership at any time, which may be granted by the court in a summary manner after notice to the parties and a hearing, if requested by any of the parties. If the court reinstates the receivership, the entire bond or other security shall be forfeit and shall be provided to the receiver for the operation and improvement of the property.

C.2A:42-140 Termination of receivership.

27. Upon request of a party in interest or the receiver, the court may order the termination of the receivership if it determines:

a. The conditions that were the grounds for the complaint and all other code violations have been abated or corrected, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been fulfilled;

b. (1) The mortgage holder or lienholder has requested the receivership be terminated and has provided adequate assurances to the court that any remaining code violations or conditions that constituted grounds for the complaint will be promptly abated, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been or will promptly be fulfilled;

(2) Any sums incurred or advanced by a mortgage holder or lienholder pursuant to this section, including court costs and reasonable attorney's fees, may be added to the unpaid balance due the mortgage holder or lienholder, with interest calculated at the same rate set forth in the note or security agreement.

c. (1) A new owner who was formerly a mortgage holder or lienholder and who has obtained the property through foreclosure or through grant of a deed in lieu of foreclosure has requested that the receivership be terminated and has provided adequate assurances to the court that any remaining code violations or conditions that constituted grounds for the complaint will be promptly abated, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been or will promptly be fulfilled;

(2) The former owner of the property shall be personally liable for payment to the new owner of any costs incurred by the new owner to cover the obligations, expenses and improvements of the receiver.

d. The building has been sold and the proceeds distributed in accordance with section 23 of P.L.2003, c.295 (C.2A:42-136); or

e. The receiver has been unable after diligent effort to present a plan that can appropriately be approved by the court or is unable to implement a plan previously approved by the court or is unable for other reason to fulfill the purposes of the receivership.

In all cases under this section, the court may impose such conditions on the owner or other entity taking control of the building upon the termination of receivership that the court deems necessary and desirable in the interest of the tenants and the neighborhood in which the building is located, including but not limited to those that may be imposed on the owner under section 25 of P.L.2003, c.295 (C.2A:42-138); except that a new owner who was formerly a mortgage holder or lienholder, or an affiliate thereof, and which has obtained the property through foreclosure or through grant of a deed in lieu of foreclosure and who demonstrates sufficient financial responsibility to the court shall not be required to post a bond.

C.2A:42-141 Preservation Loan Revolving Fund to make grants, loans to receivers.

28. a. Beginning in the fiscal year in which P.L.2003, c.295 (C.2A:42-114 et al.) becomes effective, subject to the availability of funds in the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), the department may set aside from that fund a sum of up to \$4 million per year to establish a Preservation Loan Revolving Fund for the purpose of making grants or loans, as the case may be, to receivers to implement plans which are consistent with rules and regulations adopted by the commissioner pursuant to section 31 of P.L.2003, c.295 (C.2A:42-142). Up to three million dollars in the first year and up to four million dollars in each year thereafter may be set aside for grants and loans to receivers.

b. The department shall establish terms for providing loans from the Preservation Loan Revolving Fund, including below market interest rates, deferred payment schedules, and other provisions that will enable these funds to be used effectively for any of the purposes of receivership in situations where a receiver cannot borrow funds on conventional terms without imposing hardship on the tenants or potentially impairing the purposes of the receivership.

c. The department may make grants or loans, as the case may be, from the Preservation Loan Revolving Fund in connection with any property that is under receivership pursuant to P.L.2003, c.295 (C.2A:42-114 et al.) in order to further the purposes of P.L.2003, c.295 (C.2A:42-114 et al.).

d. The sum of \$1 million from the first four million dollars to be deposited in the Preservation Loan Revolving Fund shall be used for the purpose of providing operating grants to nonprofit entities to enable such entities to act as receivers pursuant to the provisions of P.L.2003, c.295 (C.2A:42-114 et al.) and to further housing preservation through other activities including, but not limited to, acquisition of rental property, management of rental property, provision of technical assistance and training to property owners, and any activities that further the goal of building the capacity of nonprofit entities to act as receivers under the provisions of P.L.2003, c.295 (C.2A:42-114 et al.). In making grants under this section, the agency shall seek to assist a small number of entities that shall be geographically distributed among those areas with the greatest need to develop a high level of capacity and to benefit from economies of scale in the conduct of property management and receivership activities.

29. N.J.S.2B:12-20 is amended to read as follows:

Municipal housing court; jurisdiction.

2B:12-20. Municipal housing court; jurisdiction. A municipality in a county of the first class may establish, as a part of its municipal court, a full-time municipal housing court. Municipal housing courts shall have jurisdiction over actions for eviction involving property in the municipality which are transferred to the municipal housing court by the Special Civil Part of the Superior Court.

30. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to read as follows:

C.52:27D-320 Neighborhood Preservation Nonlapsing Revolving Fund.

20. The Neighborhood Preservation Program within the Department of Community Affairs' Division of Housing and Development, established pursuant to the Commissioner of Community Affairs' authority under section

8 of P.L.1975, c.248 (C.52:27D-149), shall establish a separate Neighborhood Preservation Nonlapsing Revolving Fund for monies appropriated by section 33 of P.L.1985, c.222.

a. The commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements have received substantive certification from the council, in municipalities receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), in municipalities subject to builder's remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328) or in receiving municipalities in cases where the council has approved a regional contribution agreement and a project plan developed by the receiving municipality. Programs and projects in any municipality shall be funded only after receipt by the commissioner of a written statement in support of the program or project from the municipal governing body.

b. The commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms and conditions of each grant or loan.

c. During the first 12 months from the effective date of P.L.1985, c.222 (C.52:27D-301 et al.) and for any additional period which the council may approve, the commissioner may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement; provided that the affordable housing program will meet all or part of a municipal low and moderate income housing obligation.

d. Amounts deposited in the Neighborhood Preservation Fund shall be targeted to regions based on the region's percentage of the State's low and moderate income housing need as determined by the council. Amounts in the fund shall be applied for the following purposes in designated neighborhoods;

(1) Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;

(2) Creation of accessory apartments to be occupied by low and moderate income households;

(3) Conversion of nonresidential space to residential purposes; provided a substantial percentage of the resulting housing units are to be occupied by low and moderate income households;

(4) Acquisition of real property, demolition and removal of buildings, or construction of new housing that will be occupied by low and moderate income households, or any combination thereof;

(5) Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans and permits; engineering, architectural and other

technical services; costs of land acquisition and any buildings thereon; and costs of site preparation, demolition and infrastructure development for projects undertaken pursuant to an approved regional contribution agreement;

(6) Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association or a qualified entity acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for rehabilitation or restoration of housing units which it administers which: (a) are unusable or in a serious state of disrepair; (b) can be restored in an economically feasible and sound manner; and (c) can be retained in a safe, decent and sanitary manner, upon completion of rehabilitation or restoration; and

(7) Other housing programs for low and moderate income housing, including, without limitation, (a) infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing to be provided and (b) alteration of dwelling units occupied or to be occupied by households of low or moderate income and the common areas of the premises in which they are located in order to make them accessible to handicapped persons.

e. Any grant or loan agreement entered into pursuant to this section shall incorporate contractual guarantees and procedures by which the division will ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by low and moderate income households for at least 20 years following the award of the loan or grant, except that the division may approve a guarantee for a period of less than 20 years where necessary to ensure project feasibility.

f. Notwithstanding the provisions of any other law, rule or regulation to the contrary, in making grants or loans under this section, the department shall not require that tenants be certified as low or moderate income or that contractual guarantees or deed restrictions be in place to ensure continued low and moderate income occupancy as a condition of providing housing assistance from any program administered by the department, when that assistance is provided for a project of moderate rehabilitation if the project (1) contains 30 or fewer rental units and (2) is located in a census tract in which the median household income is 60 percent or less of the median income for the housing region in which the census tract is located, as determined for a three person household by the council in accordance with the latest federal decennial census. A list of eligible census tracts shall be maintained by the department and shall be adjusted upon publication of median income figures by census tract after each federal decennial census.

C.2A:42-142 Rules, regulations.

31. a. The commissioner shall, within six months of the enactment of P.L.2003, c.295 (C.2A:42-114 et al.), adopt rules and regulations concerning registration of qualified entities.

Pending the adoption of such rules and regulations by the commissioner, an entity shall be presumed to be qualified upon a finding by the department that approval of that entity would not be detrimental to the health, safety and welfare of the residents of the property or of the community.

b. Within six months of the enactment of P.L.2003, c.295 (C.2A:42-114 et al.), the commissioner shall adopt rules and regulations setting forth minimum amounts of insurance coverage, by category, to be maintained on buildings under their control by receivers appointed pursuant to the provisions of P.L.2003, c.295 (C.2A:42-114 et al.). In addition, the commissioner shall adopt rules and regulations governing surety bonds which a receiver shall execute and file guaranteeing compliance with the terms and conditions of the receivership and any other provisions of P.L.2003, c.295 (C.2A:42-114 et al.).

The commissioner may provide for a waiver or adjustment of any of these requirements when the commissioner finds that it would prevent an entity that is otherwise fully qualified to act as a receiver from being appointed receiver, so long as that entity can demonstrate a sufficient level of financial responsibility.

Repealer.

32. The following statutes are hereby repealed:

Sections 6 through 11 of P.L.1966, c.168 (C.2A:42-79 through 84); and
Sections 8 through 12 of P.L.1962, c.66 (C.40:48-2.12h through 2.12l).

33. This act shall take effect 180 days next following enactment, except that section 31 shall take effect immediately.

Approved January 14, 2004.

CHAPTER 296

AN ACT providing a credit against the corporation business tax for certain remediation costs, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.)

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

C.54:10A-5.33 Tax credit for remediation of contaminated site.

1. a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 100% of the eligible costs of the remediation of a contaminated site as certified by the Department of Environmental Protection pursuant to section 2 of P.L.2003, c.296 (C.54:10A-5.34) and the Director of the Division of Taxation in the Department of the Treasury pursuant to section 3 of P.L.2003, c.296 (C.54:10A-5.35) performed during privilege periods beginning on or after January 1, 2004 and before January 1, 2007.

b. The priority for the application of credit allowed pursuant to this section against the tax imposed for a privilege period pursuant to section 5 of P.L.1945, c.162, in relation to the application of any other credit allowed against the tax shall be prescribed by the Director of the Division of Taxation in the Department of the Treasury. Credits allowable pursuant to this section shall be applied in the order of the credits' privilege periods. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the five privilege periods following a credit's privilege period.

d. A taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred.

e. In no event shall the amount of the tax credit, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 100% of the total cost of the remediation.

C.54:10A-5.34 Eligibility for tax credit.

2. To be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33), a taxpayer shall submit an application, in writing, to the Department of Environmental Protection for review and certification of the eligible costs of the remediation for the remediation tax credit. The department shall review the request for certifica-

tion upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The department shall certify the eligible costs of the remediation if the department finds that:

(1) the taxpayer had entered into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of a contaminated site and the taxpayer is in compliance with the memorandum of agreement;

(2) the taxpayer is not liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) for the contamination at the site; and

(3) the costs of the remediation were actually and reasonably incurred.

When filing an application for certification of the eligible costs of a remediation pursuant to this section, the taxpayer shall submit to the department a certification of the total remediation costs incurred by the taxpayer for the remediation of the subject property, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

C.54:10A-5.35 Additional requirements for eligibility.

3. In addition to the requirements of section 2 of P.L.2003, c.296 (C.54:10A-5.34), to be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33), the Director of the Division of Taxation in the Department of the Treasury shall certify that the remediation of the contaminated site has also satisfied the following:

a. the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.);

b. the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

c. there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three-year period from the inception of the business activity, will equal or exceed the value of tax credits issued; and

d. if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit authorized pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33), shall be equal to the difference in aggregate value of tax receipts from the corporation business tax pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), the sales and use tax pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) and the gross income tax pursuant to P.L.1976, c.47 (C.54A:1-1 et seq.) generated by the business activity in the privilege period

immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation, up to 100% of the eligible costs, pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33). If the difference in aggregate value is zero or less, no tax credit shall be awarded.

C.54:10A-5.36 Corporation business tax benefit certificate transfer program.

4. a. The Director of the Division of Taxation in the Department of the Treasury shall establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated with a corporation that is surrendering its tax benefits. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the benefits and a corporation that is surrendering the benefits. The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers.

b. The director shall be authorized to approve the transfer of no more than \$12,000,000 of tax benefits in each of the following State fiscal years: 2005, 2006, and 2007. The maximum value of surrendered tax benefits that a corporation shall be permitted to surrender over the three-year period pursuant to the program is \$4,000,000. Applications must be received on or before February 1, 2005 and each February 1 thereafter.

c. The Director of the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates. No taxpayer who is liable pursuant to paragraph (1) of subsection c. of P.L.1976, c.141 (C.58:10-23.11) for contamination at any site in the State may acquire a surrendered tax benefit pursuant to this section. The applications shall be submitted and the division shall approve or disapprove the applications.

C.54:10A-5.37 Performance evaluation review committee; report.

5. On or before August 1, 2006, the State Treasurer shall form a performance evaluation review committee which shall consist of representatives of the Division of Taxation, the Commerce and Economic Growth Commission, and the New Jersey Economic Development Authority, and five members from the private sector, at least two of whom shall represent the real estate development industry. This performance evaluation review

committee shall be charged with thoroughly analyzing and documenting in a report:

- a. the fiscal and economic impact to the State of the tax credit for the costs of remediation granted pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33);
- b. the total number of properties redeveloped and their local economic and fiscal impact;
- c. any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and
- d. a recommendation whether the program should be continued.

The report required pursuant to this section shall be delivered to the Governor and the chairs of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or the chairs of the successor committees, on or before November 30, 2006.

6. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 297

AN ACT concerning the practice of cosmetology and hairstyling and supplementing P.L.1984, c.205 (C.45:5B-1 et seq.).

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

C.45:5B-12.2 Display of license without showing home address.

1. Any license displayed pursuant to P.L.1984, c.205 (C.45:5B-1 et seq.) may be displayed in a manner which prevents the public display of the licensee's home address, provided that the license is not permanently defaced or altered and the license and all of the information contained thereon, including the address of record, can be presented upon the request of a person conducting an investigation.

2. This act shall take effect immediately

Approved January 14, 2004.

CHAPTER 298

AN ACT concerning foreclosure of residential property and amending P.L.1995, c.244.

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

1. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:

- (1) the particular obligation or real estate security interest;
- (2) the nature of the default claimed;
- (3) the right of the debtor to cure the default as provided in section 5 of this act;
- (4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;
- (5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;
- (6) that if the debtor does not cure the default by the date specified under paragraph (5) of this subsection c., the lender may take steps to terminate the

debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;

(7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of this act, but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;

(8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in this act, subject to the mortgage documents;

(9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;

(10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner; and

(11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject

to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 299

AN ACT appropriating \$185,376 from the Jobs, Education and Competitiveness Fund created under the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, for the construction, reconstruction, development, extension, improvement and equipment of classrooms, academic buildings, libraries, computer facilities and other higher education buildings at New Jersey's public and private institutions of higher education.

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

1. There is appropriated to the Commission on Higher Education from the "Jobs, Education and Competitiveness Fund" created pursuant to section 14 of the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, the sum of \$185,376 for the purpose of construction, reconstructing, developing, extending, improving and equipping classrooms, academic buildings, libraries, computer facilities and other higher education buildings. The sum shall be allocated to the following institution of higher education which shall provide funds to projects which have been approved by the Commission on Higher Education as provided below:

<u>Project</u>	<u>Institution Funds</u>	<u>P.L.1988, c.78 Bond Funds</u>
Construction of Higher Education Buildings at the State Colleges		
Construction of an addition to Fries Hall at New Jersey City University	\$92,688	\$185,376
TOTAL		<u>\$185,376</u>

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 300

AN ACT requiring the Department of Military and Veterans' Affairs to assess the mission of the New Jersey Naval Militia Joint Command.

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

1. The Legislature finds that the New Jersey Naval Militia Joint Command, reactivated in 1999 after having been disbanded since 1963, has provided a variety of services to the State. Since September 11, 2001, it is increasingly important to ensure that the roles of various security and safety-related agencies and groups are clearly defined, in order to facilitate their coordination in the prevention of, and response to, an emergency. It is necessary and appropriate, therefore, that the Department of Military and Veterans' Affairs review the activities of the New Jersey Naval Militia Joint Command and determine whether a viable and clearly defined mission exists for that command.

2. a. The Adjutant General shall prepare a report that describes the activities of the New Jersey Naval Militia Joint Command and assesses whether or not the New Jersey Naval Militia Joint Command has a viable and clearly defined mission. If the Adjutant General determines that such mission exists, the Adjutant General shall explain the mission and specify what personnel and material assets are required to adequately fulfill the mission. If the Adjutant General determines that the New Jersey Naval Militia Joint Command does not have a viable and clearly defined mission, the Adjutant General shall explain why such mission does not exist.

b. No later than six months following the effective date of this act, the Adjutant General shall submit the report to the Governor, the President of the Senate, the Speaker of the General Assembly, and the Chairpersons of the Senate Law and Public Safety and Veterans' Affairs, Assembly Homeland Security and State Preparedness and Assembly Military and Veterans' Affairs Committees.

3. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 301

AN ACT concerning criminal defendants and supplementing Title 2A of the New Jersey Statutes and Title 9 of the Revised Statutes.

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

C.2C:44-6.2 Person sentenced to incarceration, care and custody of minor child.

1. a. In any case in which a person has been convicted of a crime for which the person will be incarcerated, the court shall order, as part of the presentence investigation required pursuant to N.J.S.2C:44-6, that a determination be made as to whether the person is the sole caretaker of a minor child and, if so, who will assume responsibility for the child's care and custody during the period the person is incarcerated.

b. If the determination is made that the person is the sole caretaker of the child, the presentence investigation shall also include:

(1) verification that the person who will be responsible for the child's care and custody during the period of incarceration has agreed to assume responsibility for the child's care and custody;

(2) an inquiry as to the willingness of the person to assume responsibility for the child's care and custody during the period of incarceration; and

(3) a PROMIS/GAVEL network check, juvenile central registry check and domestic violence central registry check on the person who will be responsible for the child's care and custody during the period of incarceration and on any adult and juvenile over 12 years of age in the person's household.

c. The court shall provide the information compiled pursuant to subsection b. of this section, from the presentence investigation, to the Division of Youth and Family Services in the Department of Human Services.

C.9:6-8.10c Child abuse record information check on designated caretaker.

2. a. Upon receiving the presentencing investigation information from the court pursuant to section 1 of P.L.2003, c.301 (C.2C:44-6.2) concerning a sole caretaker of a child who will be incarcerated and the person who will assume care and custody of the child during the period of incarceration, the Division of Youth and Family Services in the Department of Human Services shall conduct a child abuse record information check of its child abuse records to determine if an incident of child abuse or neglect has been substantiated against the person who will be responsible for the child's care and custody or any adult and juvenile over 12 years of age in the person's household.

b. If, based on the information provided by the court and the check of its child abuse records, the division determines that the incarcerated person's

minor child may be at risk for abuse or neglect or the child's emotional, physical, health care and educational needs will not be met during the period of incarceration, the division shall take appropriate action to ensure the safety of the child.

C.2C:44-6.3 Report of persons convicted of certain crimes residing with minor children.

3. a. In any case in which a person has been convicted of a crime enumerated in subsection b. of this section and:

(1) the victim of the crime was a person under the age of 18 at the time of the commission of the crime; and

(2) the person convicted of the crime resides in a household with other minor children or is a parent of a minor child,

the court, based on an interview with the defendant, shall make a referral to the Division of Youth and Family Services in the Department of Human Services and provide the division with the name and address of the person convicted of the crime, information on the person's criminal history and the name and address of each child referred to in paragraph (2) of this subsection.

b. For purposes of this section, "crime" includes any of the following:

(1) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to N.J.S.2C:11-4;

(2) simple assault or aggravated assault pursuant to N.J.S.2C:12-1;

(3) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);

(4) terrorist threats pursuant to N.J.S.2C:12-3;

(5) kidnaping and related offenses including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure, or isolated area pursuant to N.J.S.2C:13-1 through 2C:13-6;

(6) sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.2C:14-2 through N.J.S.2C:14-4;

(7) arson pursuant to N.J.S.2C:17-1, or causing or risking widespread injury or damage which would constitute a crime of the second degree pursuant to N.J.S.2C:17-2;

(8) a crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.2C:24-4; or child abuse, neglect, or abandonment pursuant to R.S.9:6-3;

(9) endangering the welfare of an incompetent person pursuant to N.J.S.2C:24-7 or endangering the welfare of an elderly or disabled person pursuant to N.J.S.2C:24-8;

(10) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.);

or

(11) an attempt or conspiracy to commit an offense listed in paragraphs (1) through (10) of this subsection.

C.9:6-8.10d Regulations.

4. The Commissioner of Human Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of sections 2 and 3 of this act.

C.2C:44-6.4 Rules of Court.

5. The Supreme Court of the State of New Jersey may adopt Rules of Court appropriate or necessary to effectuate the purposes of sections 1 and 3 of this act.

6. This act shall take effect on the 90th day after enactment

Approved January 14, 2004.

CHAPTER 302

AN ACT concerning the prequalification of school facilities projects construction managers and supplementing chapter 18A of Title 18A of the New Jersey Statutes.

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

C.18A:18A-27.1 Prequalification of certain persons performing school construction management services.

1. Notwithstanding the provisions of N.J.S.18A:18A-5 or any other section of law to the contrary, any person who performs construction management services for a school facilities project constructed by a school district, which services have a cost in excess of the bid threshold amount specified in N.J.S.18A:18A-3, shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury. This requirement shall not apply to construction management services performed by a full-time employee of a school district.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 303

AN ACT establishing the New Jersey Obesity Prevention Task Force.

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

1. The Legislature finds and declares that:

a. Obesity is a widespread and growing problem in the United States with significant medical, psychosocial and economic consequences; according to the federal Centers for Disease Control and Prevention, in 1999, an estimated 61% of adults in this country were either overweight or obese;

b. The prevalence of obesity has increased substantially over the past 20 years, and this trend is expected to continue;

c. The estimated one-third of all Americans who are overweight or obese are at increased risk of developing such conditions as high blood pressure, high blood cholesterol, type 2 diabetes, insulin resistance, hyperinsulinemia, coronary heart disease, angina pectoris, congestive heart failure, stroke, certain forms of cancer, gallstones, cholecystitis and cholelithiasis, gout, osteoarthritis, obstructive sleep apnea and respiratory problems, pregnancy complications, poor female reproductive health, bladder control problems and psychological disorders;

d. Excess weight is second only to smoking as a cause of death in this country; nationwide, some 200,000 deaths annually are attributable to a sedentary lifestyle;

e. The economic costs of obesity and its complications are estimated to exceed \$100 billion annually;

f. Obesity is a chronic disease with a complex and multi-factorial etiology, involving biochemical, neurological/psychological, genetic, environmental and cultural/psychosocial factors; and

g. It is in the interest of the public health for the State to establish a New Jersey Obesity Prevention Task Force to develop recommendations for specific actionable measures to support and enhance obesity prevention among New Jersey residents, particularly among children and adolescents.

2. a. There is established the New Jersey Obesity Prevention Task Force in the Department of Health and Senior Services. The purpose of the task force shall be to study and evaluate, and develop recommendations relating to, specific actionable measures to support and enhance obesity prevention among the residents of this State, with particular attention to children and adolescents. The recommendations shall comprise the basis for a New Jersey Obesity Action Plan, which the task force shall present to the Governor and the Legislature pursuant to section 4 of this act.

b. The task force may consider, but need not be limited to, the following measures as components of the New Jersey Obesity Action Plan, and the most effective means of their implementation:

(1) development of a media health promotion campaign targeted to children and adolescents and their parents and caregivers;

(2) establishment of school-based childhood obesity prevention nutrition education and physical activity programs;

(3) establishment of community-based childhood obesity prevention nutrition education and physical activity programs that involve parents and caregivers;

(4) coordination of State efforts with those of federal and local government agencies to incorporate strategies to prevent and reduce childhood obesity into food assistance, health, education and recreation programs;

(5) sponsorship of periodic conferences to bring together experts in nutrition, exercise, public health, mental health, education, parenting, media, food marketing, food security, agriculture, community planning and other disciplines to consider societal solutions to the problem of obesity in children and adolescents and issue guidelines and recommendations for public policy in this State;

(6) development of training programs for health care professionals; and

(7) development-of, and support for, community-based projects targeted to high-risk populations.

3. a. The task force shall consist of 27 members as follows:

(1) the Commissioners of Health and Senior Services, Human Services and Education and the Secretary of Agriculture, or their designees, who shall serve *ex officio*; and

(2) 23 public members, who shall be appointed by the Governor no later than the 30th day after the effective date of this act, as follows: one person upon the recommendation of the New Jersey Public Health Association; one person upon the recommendation of the Medical Society of New Jersey; one person upon the recommendation of the American Academy of Pediatrics-New Jersey Chapter; one person upon the recommendation of the New Jersey Association of Osteopathic Physicians and Surgeons; one person upon the recommendation of the New Jersey Academy of Family Physicians; one person upon the recommendation of the University of Medicine and Dentistry of New Jersey; one person upon the recommendation of the New Jersey State Nurses Association; one person upon the recommendation of the New Jersey State School Nurses Association; one person upon the recommendation of the Mental Health Association in New Jersey; one person upon the recommendation of the American Heart Association; one person upon the recommendation of the American Diabetes Association; one

person upon the recommendation of the Garden State Association of Diabetes Educators; one person upon the recommendation of the American Cancer Society; one person upon the recommendation of the New Jersey Dietetic Association; one person upon the recommendation of the New Jersey Health Officers Association; one person upon the recommendation of the New Jersey Association for Health, Physical Education, Recreation and Dance; one person upon the recommendation of the New Jersey Recreation and Park Association; one person upon the recommendation of the New Jersey Council on Physical Fitness and Sports; one person upon the recommendation of the YMCA; one person upon the recommendation of the New Jersey Education Association; one person upon the recommendation of the New Jersey Food Council; and two members of the public with a demonstrated expertise in issues relating to the work of the task force.

Vacancies in the membership of the task force shall be filled in the same manner provided for the original appointments.

b. The Commissioner of Health and Senior Services or the commissioner's designee shall serve as chairperson of the task force. The task force shall organize as soon as practicable following the appointment of its members and shall select a vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the task force.

c. The public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties and within the limits of funds available to the task force.

d. The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

e. The task force may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature.

f. The Department of Health and Senior Services shall provide staff support to the task force.

4. The task force shall report its findings and recommendations to the Governor and the Legislature, along with any legislative bills that it desires to recommend for adoption by the Legislature, no later than 18 months after the initial meeting of the task force. The report shall contain the New Jersey Obesity Action Plan provided for in section 2 of this act.

5. This act shall take effect immediately and shall expire upon the issuance of the task force report.

Approved January 14, 2004.

CHAPTER 304

AN ACT establishing right of person engaged in military service for more than 90 days to cancel a motor vehicle lease without penalty, amending P.L.1979, c.317.

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

1. Section 15 of P.L.1979, c.317 (C.38:23C-15) is amended to read as follows:

C.38:23C-15 Contract for purchase of property, rescission, termination; cancellation of auto lease, due to certain military service.

15. a. (1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price or a deposit or installment under the contract, lease or bailment from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction; provided, that nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession, retention, foreclosure, sale or taking possession of property purchased or received or which is security for any obligation under such contract, pursuant to a mutual agreement of the parties thereto, or their assignees, if such agreement is executed in writing subsequent to the making of such contract and during or after the period of military service of the person concerned.

(2) Any person who has entered military service for a period of more than 90 consecutive days, who prior to such entry leased a non-commercial motor vehicle for personal use, whether with or without a view to purchase, may cancel the lease by giving written notice of cancellation to the lessor or the lessor's assignor at any time following the date of receipt of the order to enter such military service. Cancellation of a lease providing for monthly lease payments shall not be effective (1) until the last day of the month following the month in which notice of cancellation is made, or (2) when the leased motor vehicle is returned to the lessor or the lessor's assignor, whichever is later. Upon cancellation of the lease, the former lessee and any co-signer shall have no further liability to the lessor or the lessor's assignor,

except that the lessee and any co-signer shall be obligated to the lessor or assignor for any damages to the motor vehicle and excess mileage over the pro rata amount permitted as of the date of cancellation of the lease. The lessor or lessor's assignor shall not impose any penalty or charge upon the lessee or any co-signer on the lease for early cancellation of the lease. This paragraph shall apply whether or not the person is the sole signatory of the lease.

b. Any person who shall knowingly resume possession of property which is the subject of this section, other than as provided in paragraph a. of this section, or attempt so to do, shall be adjudged a disorderly person and shall be punished by imprisonment not to exceed six months, or by fine not to exceed \$1,000, or both.

c. Upon the hearing of such action, the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, except as provided in section 17 of this act, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this act except that such stay under this section may be ordered for the period of military service and six months thereafter or any part of such period, unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 305

AN ACT concerning congregate housing facilities and supplementing P.L.1981, c.553 (C.52:27D-182 et seq.).

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

C.52:27D-188.1 Congregate housing, power-assisted door opener, required.

1. Within 120 days of the effective date of P.L.2003, c.305 (C.52:27D-188.1 et seq.), every entrance to a building located within a "congregate housing facility," as defined in section 3 of P.L.1981, c.553 (C.52:27D-184), shall be equipped with a power-assisted door opener, if the door of the

entrance requires greater than 10 pounds of pull in order to be opened manually.

C.52:27D-188.2 Congregate housing, unlocking by remote device, staff required, certain circumstances.

2. Upon the request of a project resident of a "congregate housing facility," as defined in section 3 of P.L.1981, c.553 (C.52:27D-184), the qualified housing agency operating the facility shall provide for a system which permits the unlocking of a door to a building, other than a door to an individual unit, by a remote device or by staff.

C.52:27D-188.3 Enforcement, regulations.

3. The Commissioner of Health and Senior Services shall have the authority to enforce the provisions of this act and shall adopt regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

4. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 306

AN ACT concerning municipal bonds and amending P.L.2003, c.15.

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

1. Section 11 of P.L.2003, c.15 (C.40A:2-8.1) is amended to read as follows:

C.40A:2-8.1 Issuance of bond anticipation note; rules, regulations.

11. a. On and after the effective date of P.L.2003, c.15, a local unit may, in anticipation of the issuance of bonds, borrow money and issue notes if the bond ordinance or subsequent resolution so provides. Any such note shall be designated as a "bond anticipation note" and shall be subject to the following provisions:

(1) every note shall contain a recital that it is issued for a period not exceeding one year and may be renewed from time to time for additional periods, none of which shall exceed one year;

(2) all such notes, including renewals, shall mature and be paid not later than the first day of the fifth month following the close of the tenth fiscal year next following the date of the original notes; and

(3) (a) no such notes shall be renewed beyond the third anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which those notes are issued, is paid and retired on or before each subsequent anniversary date beyond which such notes are renewed from funds other than the proceeds of obligations; or

(b) for a bond ordinance approved prior to the effective date of P.L.2003, c.15, the governing body may choose to apply the following renewal requirements instead of the requirements of subparagraph (a) of this paragraph: no such notes shall be renewed beyond the third anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which those notes are issued, is paid and retired on or before the third anniversary date, and if such notes are renewed beyond the fourth anniversary date of the original notes, a like amount is paid or retired on or before the fourth anniversary date from funds other than the proceeds of obligations.

b. The local finance board shall, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt such rules and regulations as are necessary to implement the provisions of this act.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 307

AN ACT concerning the employment of relatives by members of the Legislature and supplementing Title 52 of the Revised Statutes.

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

C.52:11-5.1 Legislator's district office, prohibition against employment of relatives.

1. No member of the Legislature shall gainfully employ his or her relative in any position in the legislative office that the member maintains in his or her legislative district.

If members of the Legislature jointly maintain a legislative district office, no relative of the members who maintain that joint office shall be gainfully employed in any position in that office.

As used in this section, "relative" means the member's spouse or the member's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daugh-

ter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the individual is related to the member or the member's spouse by blood, marriage or adoption.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 308

AN ACT concerning health care benefits for members of the Legislature and supplementing Title 52 of the Revised Statutes.

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

C.52:11-5.2 Legislators, enrollment in health care benefits, election, limitations.

1. Notwithstanding the provisions of any other law to the contrary, a member of the Legislature who elects health benefits coverage based on service in the Legislature shall not enroll as the primary insured for health benefits for which the member is eligible through any other public entity, and shall not accept any amount of money in consideration for filing a waiver of coverage.

2. This act shall take effect immediately.

Approved January 14, 2004.

CHAPTER 309

AN ACT concerning the New Jersey Better Educational Savings Trust (NJBEST) Program and amending N.J.S.18A:71B-41.

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

1. N.J.S.18A:71B-41 is amended to read as follows:

Operation of program; fees.

18A:71B-41. a. The program shall be operated as a trust through the use of accounts for designated beneficiaries. An account may be opened by any

person who desires to save to pay the qualified higher education expenses of an individual by satisfying each of the following requirements:

- (1) completing an application in the form prescribed by the authority;
- (2) paying the one-time application fee established by the authority;
- (3) making the minimum contribution required by the authority for opening an account;
- (4) designating the account or accounts to be opened; and
- (5) in the case of an account to which subsection a. of N.J.S.18A:71B-44 would apply, demonstrating to the satisfaction of the authority that either the contributor, if an individual, or the designated beneficiary is a New Jersey resident. The requirement of New Jersey residency for either the contributor or the designated beneficiary would not apply to an account to which subsection b. of N.J.S.18A:71B-44 would apply unless otherwise determined by the authority.

b. (Deleted by amendment, P.L.2003, c.309).

c. Contributions to accounts shall be made only in cash, as defined by the authority pursuant to regulations, in accordance with section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

d. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the authority pursuant to regulations.

e. A contributor may change the designated beneficiary of an account or rollover all or a portion of an account to another account if the change or rollover would not result in a distribution includible in gross income under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, in accordance with procedures established by the authority.

f. In the case of any nonqualified withdrawal, a penalty at a level established by the authority and sufficient to be considered a more than de minimis penalty for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be withheld and paid to the authority for use in operating and marketing the program. The authority may elect not to impose a penalty if that section ceases to include a provision requiring more than de minimis penalties for a program to qualify as a qualified State tuition program.

g. If a contributor makes a nonqualified withdrawal and a penalty amount is not withheld pursuant to subsection f. of this section or the amount withheld is less than the amount required to be withheld under that subsection, the contributor shall pay the unpaid portion of the penalty to the authority at the same time that the contributor files a State income tax return for the taxable year of the withdrawal, or if the contributor does not file a return, the unpaid portion of the penalty shall be paid on or before the due date for the filing of that income tax return.

h. Each account shall be maintained separately from each other account under the program.

i. Separate records and accounting shall be maintained for each account for each designated beneficiary.

j. A contributor to or designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings from the account, except as permitted under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

k. A contributor or a designated beneficiary shall not use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

l. The maximum contribution for any designated beneficiary shall be determined by the authority pursuant to regulations, in accordance with section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

m. Statements, reports on distributions and information returns relating to accounts shall be prepared, distributed, and filed to the extent required by section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

n. The authority may charge, impose and collect reasonable administrative fees and service charges in connection with any agreement, contract or transaction relating to the program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

o. The State or any State agency, municipality, or other political subdivision may, by contract or collective bargaining agreement, agree with any employee to remit contributions to accounts through payroll deductions made by the appropriate officer or officers of the State, State agency, county, municipality, or political subdivision. The contributions shall be held and administered in accordance with this act.

p. A contributor, if an individual, may designate another person as a successor contributor in the event of the death of the original contributor. The person who opens the account, or any successor contributor, shall be considered the contributor as defined in N.J.S.18A:71B-36.

q. Any person may make contributions to an account, consistent with the terms established by the authority, after the account is opened.

2. This act shall take effect immediately.

Approved January 18, 2004.

CHAPTER 310

AN ACT concerning the use of wireless telephones in motor vehicles and supplementing chapter 4 of Title 39 of the Revised Statutes.

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

C.39:4-97.3 Use of hands-free wireless telephone in moving vehicle; definitions; enforcement.

1. a. The use of a wireless telephone by an operator of a moving motor vehicle on a public road or highway shall be unlawful except when the telephone is a hands-free wireless telephone, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle.

b. The operator of a motor vehicle may use a hand-held wireless telephone while driving with one hand on the steering wheel only if:

(1) The operator has reason to fear for his life or safety, or believes that a criminal act may be perpetrated against himself or another person; or

(2) The operator is using the telephone to report to appropriate authorities a fire, a traffic accident, a serious road hazard or medical or hazardous materials emergency, or to report the operator of another motor vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs. A hand-held wireless telephone user's telephone records or the testimony or written statements from appropriate authorities receiving such calls shall be deemed sufficient evidence of the existence of all lawful calls made under this paragraph.

As used in this act, "hands-free wireless telephone" means a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone.

"Use" of a wireless telephone shall include, but not be limited to, talking or listening to another person on the telephone.

c. Enforcement of this act by State or local law enforcement officers shall be accomplished only as a secondary action when the operator of a motor vehicle has been detained for a violation of Title 39 of the Revised Statutes or another offense.

d. A person who violates this section shall be fined no less than \$100 or more than \$250.

e. No motor vehicle points or automobile insurance eligibility points pursuant to section 26 of P.L.1990, c.8 (C.17:33B-14) shall be assessed for this offense.

f. The Chief Administrator of the New Jersey Motor Vehicle Commission shall develop and undertake a program to notify and inform the public as to the provisions of this act.

C.39:4-97.4 Inapplicability of act to certain officials.

2. The prohibitions set forth in this act shall not be applicable to any of the following persons while in the actual performance of their official duties: a law enforcement officer; a member of a paid, part-paid, or volunteer fire department or company; or an operator of an authorized emergency vehicle.

C.39:4-97.5 Supersedure, preemption of local ordinances.

3. This act supersedes and preempts all ordinances of any county or municipality with regard to the use of a wireless telephone by an operator of a motor vehicle.

4. This act shall take effect on the first day of the sixth month after enactment.

Approved January 20, 2004.

CHAPTER 311

AN ACT providing financial assistance for certain lead hazard control work, establishing the Lead Hazard Control Assistance Fund, supplementing Title 52 of the Revised Statutes, amending various parts of the statutory law, and making an appropriation.

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

C.52:27D-437.1 Short title.

1. This act shall be known and may be cited as the "Lead Hazard Control Assistance Act."

C.52:27D-437.2 Findings, declarations relative to lead hazard control.

2. The Legislature finds and declares:
a. Lead is an element that has been used over the years in many products. The toxicity of lead has been known for several decades, causing its

inclusion in products such as gasoline and residential paint to be banned by the federal government.

b. All animals and people can be negatively affected by lead, depending upon the amount, duration, and promptness of treatment. The range of health effects includes reduced stature, miscarriage, hypertension, and, most notably, neurological damage, particularly in children whose brains are developing.

c. Although a number of sources of lead exposure have been brought under control, environmental and public health professionals believe that the toxic metal lead is the number one environmental hazard facing children today. A substantial majority of lead exposure is derived from lead-based paint and dust.

d. Because of the age of New Jersey's housing stock, our State is among the states with the most serious risk of exposure from previous residential use of lead-based paint. It is estimated that there are about two million homes which were constructed in New Jersey prior to 1978, the year in which the sale of lead in paint for residential use was banned.

e. A comprehensive program to identify lead hazards in residential housing and also to identify housing which is safe from exposure to lead hazards is necessary in order to eradicate the major source of lead exposure to our State's children. The Legislature further finds that children living in rental housing are particularly at risk to exposure from lead because tenants do not have the requisite control over rental units to abate lead hazards from the property. Therefore, the comprehensive program will emphasize methods to safeguard children residing in rental housing and require the State to track the progress of making all of New Jersey's rental housing stock more lead safe.

C.52:27D-437.3 Definitions relative to lead hazard control.

3. As used in this act:

"Commissioner" means the Commissioner of Community Affairs;

"Department" means the Department of Community Affairs;

"Eligible loan" means a loan made for the purpose of financing lead hazard control work in housing located in the State;

"Financial assistance" means loans and loan guarantees and grants;

"Fund" means the Lead Hazard Control Assistance Fund established pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4);

"Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential

hazards, and the establishment and operation of management and resident education programs, or the term as it is defined under 42 U.S.C.s.4851b;

"Lead abatement" means a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the commissioner, provided that such standards shall be consistent with applicable federal standards. The term includes:

a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

b. all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5% by weight, or such other level as may be established by federal law;

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces, that would result in adverse human health effects;

"Lead-based paint hazard inspection" means an inspection of a housing unit and the structure's interior common areas and exterior surface for the presence of lead-based paint hazards;

"Lead-safe housing" means housing in which a lead-based paint hazard risk has been significantly reduced through the use of interim controls as permitted under federal law and as defined in 42 U.S.C. s.4851b, housing that is lead-free or housing in which lead abatement has been performed;

"Lead hazard control work" means work to make housing lead-safe, or to mitigate, through the use of interim controls as permitted under federal law and as defined in 42 U.S.C.s.4851b, or to eliminate permanently lead-based paint hazards on a premises by a business firm or person certified to perform lead abatement work pursuant to sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 et seq.) and sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 et seq.) and the costs of temporary relocation, determined by the commissioner to be necessary pursuant to rules prescribed by the commissioner, while lead hazard control work is being performed. The determination of the commissioner shall be subject to review and appeal pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

"Multifamily housing" means a dwelling unit in a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3);

"Project" means a group of buildings subject to P.L.1967, c.76 (C.55:13A-1 et seq.), as defined in section 3 of P.L.1967, c.76 (C.55:13A-3).

C.52:27D-437.4 "Lead Hazard Control Assistance Fund."

4. a. There is hereby established in the department the "Lead Hazard Control Assistance Fund" hereinafter referred to as the "fund," which shall be continuing and nonlapsing, for the purpose of funding loans and grants authorized pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.). Moneys in the fund not immediately required for payment or liquid reserves may be invested and reinvested by the department in the same manner in which other department funds may be invested.

b. There shall be paid into the fund:

(1) moneys deposited into the fund as repayment of principal and interest on outstanding loans made from the fund;

(2) any income earned upon investment of moneys in the fund by the department pursuant to subsection a. of this section; and

(3) any other funds that may be available to the fund through appropriation by the Legislature or otherwise.

c. Moneys in the fund shall be used exclusively for:

(1) funding loans and grants made by the department pursuant to section 5 of P.L.2003, c.311 (C.52:27D-437.5);

(2) public education for the prevention of lead poisoning; and

(3) defraying the administrative costs of the department in carrying out the purposes and provisions of P.L.2003, c.311 (C.52:27D-437.1 et al.) up to an amount not to exceed 5% of the total moneys appropriated to the fund during the fiscal year. The department shall determine the amounts to be made available from the fund for the purposes of grants and loans, respectively, on an annual basis.

d. All balances in the Lead Hazard Control Assistance Fund are appropriated for the purposes of the fund.

C.52:27D-437.5 Grants, loans.

5. a. The department is hereby authorized to provide financial assistance in the form of grants or loans, or a combination thereof, with moneys available from the fund to eligible owners of multifamily housing and to eligible owners of single-family and two-family homes, whether or not utilized as rental housing, for lead hazard control work, in compliance with the terms of P.L.2003, c.311 (C.52:27D-437.1 et al.) and subject to the conditions set forth in this section. "Eligible owner" shall mean an owner who provides proof to the satisfaction of the department of the presence of a lead-based paint hazard on the owner's property.

b. Financial assistance in the form of a loan may be provided to an eligible owner of multifamily housing, a single-family home or a two-family home based on the owner's ability to repay the loan as determined by the department.

c. Financial assistance shall be provided for a period to be determined by the department.

d. The department may provide financial assistance, upon application therefore, for up to 100% of the costs of lead hazard control work, including associated lead evaluation costs, and for temporary relocation assistance, except that no award of financial assistance for a dwelling unit may exceed \$150,000.

e. Financial assistance provided in the form of a loan shall be secured by a lien upon the real property on which the lead hazard control work is performed, with respect to which the financial assistance is made and other such collateral as the department may consider necessary to secure the interests of the fund in accordance with the provisions and purposes of P.L.2003, c.311 (C.52:27D-437.1 et al.). The department may, if it deems necessary, require the financial assistance to be secured by a personal loan guarantee by the owner of the property or by a lien upon other real property belonging to the person to whom the loan is made. The department may authorize a loan in conjunction with an award of a grant for a partial or the total amount of the costs of lead hazard control work.

f. The department shall establish a program to provide the grants authorized pursuant to this section. Grants shall not be made available to owners of multiple dwellings comprising more than four separate dwelling units. Priority shall not be granted to any applicant on the basis of the location of the housing. Priority may be given, however, to those residences in which children under the age of six reside. The department may award the grants on a pro-rata basis to the applicants, if there is an insufficient amount in the fund to award grants for the full amount of the projected cost of the lead hazard control work.

C.52:27D-437.6 Rules, regulations.

6. The Commissioner of Community Affairs 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 provisions of P.L.2003, c.311 (C.52:27D-437.1 et al.), including, but not limited to: the issuance of loans and grants, lead-based paint hazard inspections and evaluations, lead hazard control work, and training courses for persons engaged in lead-safe maintenance work or lead hazard control work. These regulations shall allow for certified third party risk assessors to provide assurance that rental properties meet the standards established for subsection (w) of section 7 of P.L.1967, c.76 (C.55:13A-7) as added by P.L.2003, c.311. Property owners using such third party risk assessors shall provide evidence of compliance at the time of the cyclical inspection carried out under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.). Notwithstanding

this intent the department shall maintain existing authority to respond to tenant complaints related to subsection (w) of section 7 of P.L.1967, c.76 (C.55:13A-7) as added by P.L.2003, c.311.

C.52:27D-437.7 Registry of loan, grant projects.

7. Whenever a loan or grant is provided pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.), the address of the multifamily housing, single-family home or two-family home and the details concerning the project shall be entered into a registry which shall be maintained by the department. The department shall enter onto the registry information for any other housing which it may have concerning the lead-safe status of such housing. The housing shall be categorized as either:

- a. lead-free, which shall include any housing constructed after 1977 and housing certified to be free of lead-based paint by a certified inspector;
- b. lead-abated, including housing where lead-based paint hazards have been permanently abated;
- c. lead-hazard controlled, including housing in which preventative maintenance practices and interim controls have been implemented; or
- d. lead-free interior, which shall include housing certified to have a lead-free interior by a certified inspector.

The purpose of the registry shall be to supply a list from which lead-safe housing can be easily identified, and through which the State's progress in rendering housing lead hazard controlled may be tracked.

C.52:27D-437.8 Review of cases of immediate risk by commissioner; liability for relocation costs.

8. a. The Commissioner of Community Affairs shall review any case referred to the department in which a lead hazard condition has been found to exist and which poses an immediate risk of continuing exposure to lead hazard for any children living in the housing. If the lead hazard has been found to exist in a rental housing unit, the commissioner shall determine whether the removal of the residents from the rental housing unit containing that lead 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 lead-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 lead-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 lead-safe condition in accordance with standards established by rule of the Department of Community Affairs or by municipal ordinance, 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.

C.52:27D-437.9 Emergency Lead Poisoning Relocation Fund.

9. a. There is created in the State Treasury an account which shall be called the Emergency Lead Poisoning Relocation Fund. There is appropriated, from the funds in the "Catastrophic Illness in Children Relief Fund," established pursuant to section 3 of P.L.1987, c.370 (C.26:2-150), \$1,000,000 for the purpose of emergency relocation assistance for lead

poisoned children for deposit into the Emergency Lead Poisoning Relocation Fund.

b. Whenever a child who has tested positive for lead poisoning is removed from his dwelling unit in connection with an order to abate a lead-based paint hazard from a local or State health official, or upon the order of the Commissioner of Community Affairs, payments from the fund created pursuant to this section shall be authorized for the purpose of providing emergency relocation assistance to that child and the child's family.

c. All balances in the Emergency Lead Poisoning Relocation Fund are appropriated for the purposes of that fund.

d. Notwithstanding any other provision of law to the contrary, a payment made from the funds appropriated from the "Catastrophic Illness in Children Relief Fund" for the purposes in this section shall be authorized regardless of whether the relocation assistance is covered by any other State or federal program or any insurance contract and regardless of whether such expense will exceed 10% of the first \$100,000 of annual income of a family plus 15% of the excess income over \$100,000 provided that if reimbursement is received from the landlord, federal or State sources or from insurance proceeds, such reimbursement shall be directed to reimburse the fund for expenses paid under this section. Payment limitations set forth in the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) shall not apply to payments under this section.

C.52:27D-437.10 Additional fee per unit inspected.

10. In addition to the fees permitted to be charged for inspection of multiple dwellings pursuant to section 13 of P.L.1967, c.76 (C.55:13A-13), the department shall assess an additional fee of \$20 per unit inspected for the purposes of P.L.2003, c.311 (C.52:27D-437.1 et al.) concerning lead hazard control work. In a common interest community, any inspection fee charged pursuant to this section shall be the responsibility of the unit owner and not the homeowners' association unless the association is the owner of the unit. The fees collected pursuant to this section shall be deposited into the "Lead Hazard Control Assistance Fund" established pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4).

C.52:27D-437.11 Credit to fund of certain sales tax on paint, etc.

11. a. There shall be credited to the "Lead Hazard Control Assistance Fund," established pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4), for each State fiscal year commencing on and after July 1, 2004, an amount equivalent to the greater of \$7,000,000 or the amount of revenue required to be set aside pursuant to subsection b. of this section.

b. There shall be set aside from the State revenue collected from the State tax imposed under the "Sales and Use Tax Act," pursuant to P.L.1966,

c.30 (C.54:32B-1 et seq.), as amended and supplemented, or any other subsequent law of similar effect, an amount equal to the lesser of \$0.50 or the tax imposed on every retail sale of a container of paint, or other surface coating material, which shall include any pigmented, liquid substance to be applied to surfaces by brush, roller, spray or other means, including but not limited to, white base paint and colorants; provided, however, that the total amount set aside pursuant to this section shall not exceed \$14,000,000 annually.

c. The Director of the Division of Taxation shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this section.

C.52:27D-437.12 Exemptions from inspection.

12. a. Notwithstanding any other provisions of this act, a dwelling unit shall not be subject to inspection and evaluation or subject to any fees for the presence of lead-based paint hazards if the unit:

- (1) has been certified to be free of lead-based paint;
- (2) was constructed during or after 1978;
- (3) is a seasonal rental unit which is rented for less than six months' duration each year;
- (4) has been certified as having a lead-free interior by a certified inspector; or
- (5) is occupied by the owner of the dwelling unit.

b. In a common interest community, any inspection fee charged shall be the responsibility of the unit owner and not the homeowners' association unless the association is the owner of the unit.

13. Section 6 of P.L. 1971, c. 366 (C.24:14A-6) is amended to read as follows:

C.24:14A-6 Responsibilities of board; enforcement, reports.

6. The board in each municipality or other area of jurisdiction, shall have the primary responsibility for investigation of violations under P.L.1971, c.366 (C.24:14A-1 et seq.) and the enforcement of P.L.1971, c.366 (C.24:14A-1 et seq.), except as provided otherwise in accordance with P.L.2003, c.311 (C.52:27D-437.1 et al.) and shall make reports of all such violations and enforcement procedures to the State Department of Health and Senior Services and the Department of Community Affairs when relocation assistance is required pursuant to P.L.2003, c.311.

14. Section 7 of P.L.1971, c.366 (C.24:14A-7) is amended to read as follows:

C.24:14A-7 Order for remediation, disposition of lead-based paint hazard.

7. When the board of health having primary jurisdiction under P.L.1971, c.366 (C.24:14A-1 et seq.) finds that there is a lead-based paint hazard on the interior walls, ceilings, doors, floors, baseboards or window sills and frames of any dwelling, or any exterior surface that is readily accessible to children it may order the remediation and appropriate disposition of such lead-based paint hazard by using abatement or lead hazard control methods approved in accordance with the provisions of n accordance with the provisions of P.L.2003, c.311 (C.52:27D-437.1 et al.), under such safety conditions as it may specify, and as shall be approved by the department.

15. Section 8 of P.L.1971, c.366 (C.24:14A-8) is amended to read as follows:

C.24:14A-8 Notification to owner of hazard, contents.

8. When the board of health having primary jurisdiction hereunder finds that there is a lead-based paint hazard on the interior walls, ceilings, doors, floors, baseboards or window sills and frames of any dwelling or any exterior surface that is readily accessible to children and further finds a person occupying or using such dwelling is an unequivocal case of lead poisoning or at high risk of lead intoxication as defined by department regulation it shall at once notify the owner that he is maintaining a public nuisance and order him to remediate the nuisance by using abatement or lead hazard control methods approved in accordance with P.L.2003, c.311 (C.52:27D-437.1 et al.) and in accordance with the following:

- a. In the event of the identification of a lead-poisoned child, the interior of the residence of the child shall be evaluated for lead-based paint hazard.
- b. If no lead-based paint hazard is found in the interior of the residence, then the exterior of the residence shall be evaluated.
- c. If no lead-based paint hazard is discovered in either the interior or exterior of the residence, then the soil on the property on which the residence and other structures, if any, are located shall be examined for lead hazards.

A duplicate of the notice shall be left with one or more of the tenants or occupants of the dwelling. If the owner resides out of the State or cannot be so notified speedily, a notice left at the house or premises shall suffice.

C.52:27D-437.13 Inapplicability of payment limitations.

16. The payment limitations set forth in the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) shall not apply to payments made from the "Catastrophic Illness in Children Relief Fund," established pursuant to section 3 of P.L. 1987, c. 370 (C.26:2-150) for the purposes of relocating a lead-poisoned child pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.).

17. Section 2 of P.L.1993, c.288 (C.26:2Q-2) is amended to read as follows:

C.26:2Q-2 Definitions.

2. As used in sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12):

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or as the term is defined under 42 U.S.C.s.4851b.

"Lead abatement" means a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner of Community Affairs in compliance with standards promulgated by the appropriate federal agencies. Such term includes:

a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

b. all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

"Lead evaluation" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Lead hazard control work" means work to make housing lead-safe, or to mitigate, through the use of interim controls as permitted under federal law and as defined in 42 U.S.C.s.4851b, or to eliminate permanently lead-based paint hazards by abatement on a premises by a person certified to perform lead abatement work pursuant to sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 et seq.) and sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 et seq.).

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5% by weight, or such other level as may be established by federal law.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces, that would result in adverse human health effects.

"Lead-based paint hazard inspection" means an inspection of residential housing and the structure's interior common areas and exterior surface for the presence of lead-based paint hazards.

"Lead safe maintenance work" means those maintenance activities which are necessary to maintain surfaces in a lead safe condition and to prevent lead-based paint hazards from occurring or reoccurring.

"Surface" means an area such as an interior or exterior wall, ceiling, floor, door, door frame, window sill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

18. Section 3 of P.L.1993, c.288 (C.26:2Q-3) is amended to read as follows:

C.26:2Q-3 Certification required for performance of lead evaluation, abatement work.

3. a. A person shall not perform a lead evaluation or lead abatement work unless the person is certified by the department pursuant to this act.

b. The commissioner shall establish a certification program to assure the competency of persons to perform lead evaluations or lead abatement work in a safe and reliable manner. The commissioner may establish different classes of certification reflecting the different types and complexities of lead evaluation and abatement activities.

c. The commissioner shall certify a person who satisfactorily completes the certification training course required pursuant to this act, passes an examination prescribed by the department and meets any other requirements for certification that may be established by the commissioner or by federal law.

d. The certification shall be in writing with a photo identification, signed and dated by the commissioner. It shall be carried upon the person while performing evaluation or abatement services.

e. Notwithstanding the provisions of subsection a. of this section to the contrary, a person who is certified to conduct lead evaluations or perform lead abatement work in a jurisdiction outside of New Jersey is entitled to receive a New Jersey certification from the department if the person demonstrates successful completion of a training and certification program in that jurisdiction that is at least as rigorous and comprehensive as the State training and certification program.

f. Lead evaluation and lead abatement certifications shall be for a period not to exceed two years and shall be non-transferable. A person may apply for recertification during the 90-day period before the certification expiration date or the 90-day period after the certification expiration date; except that if a person applies after the certification expiration date, he shall

not perform any services for which certification is required until the certification is renewed. If a certification has expired for more than 90 days, the person is required to obtain a new certification.

g. Nothing in this section shall be construed to restrict or otherwise affect the right of any person to engage in painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, or to engage in lead safe maintenance work or lead hazard control work, but a person shall not hold himself out as certified by the department or otherwise represent that he has specialized competency to perform lead evaluation or abatement work, unless he has been certified or otherwise specifically authorized pursuant to sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

A person for hire who seeks to engage in lead safe maintenance work or lead hazard control work shall, prior to doing so, complete such training course as may be prescribed by the Commissioner of Community Affairs and provided by a training provider accredited by the commissioner.

A person who utilizes interim controls to reduce the risk of lead-based paint exposure shall utilize only those methods approved by the appropriate federal agencies, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, as may be set forth under 42 U.S.C.s.4851b or those methods set forth in guidelines established by the Commissioner of Community Affairs, but shall not be required to be certified pursuant to this section unless performing lead abatement.

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

C.55:13A-7 Rules, regulations.

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, 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.

20. Section 19 of P.L.1967, c.76 (C.55:13A-19) is amended to read as follows:

C.55:13A-19 Violations, penalties.

19. (a) No person shall

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

(2) Prepare, utter or render any false statement, report, document, plans or specifications permitted or required to be prepared, uttered or rendered under the provisions of this act; or

(3) Render ineffective or inoperative any protective equipment installed, or intended to be installed, in any hotel or multiple dwelling; or

(4) Refuse or fail to comply with any lawful ruling, action, order or notice of the commissioner; or

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

(b) Any person who violates, or causes to be violated, any provision of subsection (a) of this section shall be liable to a penalty of not less than \$50.00 nor more than \$500.00 for each violation, and a penalty of not less than \$500.00 nor more than \$5,000.00 for each continuing violation. Where any violation of subsection (a) of this section is of a continuing nature, each day during which such continuing violation remains unabated after the date fixed by the commissioner in any order or notice for the correction or termination of such continuing violation, shall constitute an additional, separate and distinct violation, except during the time an appeal from said order may be taken or is pending. The commissioner, in the exercise of his administrative authority pursuant to this act, may levy and collect penalties in the amounts set forth in this section. Where the administrative penalty order has not been satisfied within 30 days of its issuance the penalty may be sued for, and recovered by and in the name of the commissioner in a civil action by a summary proceeding under "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in the Superior Court.

(c) Any person shall be deemed to have violated, or to have caused to be violated, any provision of subsection (a) of this section whenever any officer, agent or employee thereof, under the control of and with the knowledge of said person shall have violated or caused to be violated any of the provisions of subsection (a) of this section.

(d) The commissioner may cancel and revoke any permit, approval or certificate required or permitted to be granted or issued to any person pursuant to the provisions of this act if the commissioner shall find that any such person has violated, or caused to be violated, any of the provisions of subsection (a) of this section.

(e) Any penalties collected pursuant to this section levied as the result of a violation of subsection (w) of section 7 of P.L.1967, c.76 (C.55:13A-7) and which occurred pursuant to inspection for lead-based paint hazards shall

be deposited in the Lead Hazard Control Assistance fund established pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4). Penalties levied as the result of multiple violations shall be allocated to the Lead Hazard Control Assistance fund in such proportion as the commissioner shall prescribe.

C.52:27D-437.14 Report to Legislature.

21. On or before the last day of the 24th month ending after the effective date of P.L.2003, c.311 (C.52:27D-437.1 et al.), and each two years thereafter, the Commissioner of Community Affairs shall issue a report to the Legislature on the effectiveness of the provisions of P.L.2003, c.311 (C.52:27D-437.1 et al.), which report shall include:

- a. Details on the number and amounts of loans and grants provided and the households served;
- b. Information obtained and entered on the housing registry created pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.); and
- c. The costs incurred and the revenues derived by the department in administering P.L.2003, c.311 (C.52:27D-437.1 et al.), including information regarding any fees which may be authorized to be charged or increased pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.).

22. Section 14 of P.L.1993, c.288 (C.52:27D-427) is amended to read as follows:

C.52:27D-427 Definitions.

14. As used in sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437):

"Business firm" means and includes any corporation, company, association, society, firm, partnership or joint stock company, or any sole proprietor, engaged in, advertising, or holding itself out to be in the business of lead evaluation or lead abatement.

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

"Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or as the term is defined under 42 U.S.C.s.4851b.

"Lead abatement" means a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the commissioner in compliance with standards promulgated by the appropriate federal agencies. Such term includes:

a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

b. all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

"Lead evaluation" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Lead hazard control work" means work to make housing lead-safe, or to mitigate, through the use of interim controls as permitted under federal law and as defined in 42 U.S.C.s.4851b, or to eliminate permanently lead-based paint hazards by abatement on a premises by a business firm certified to perform lead abatement work pursuant to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 et al.).

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5% by weight, or such other level as may be established by federal law.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces, that would result in adverse human health effects.

"Lead-based paint hazard inspection" means an inspection of a housing unit and the structure's interior common areas and exterior surface for the presence of lead-based paint hazards.

"Lead safe maintenance work" means those maintenance activities which are necessary to maintain surfaces in a lead safe condition and to prevent lead-based paint hazards from occurring or reoccurring.

"Surface" means an area such as an interior or exterior wall, ceiling, floor, door, door frame, window sill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

23. Section 15 of P.L.1993, c.288 (C.52:27D-428) is amended to read as follows:

C.52:27D-428 Certification of business firms performing lead evaluation, abatement work.

15. a. A business firm shall neither directly nor indirectly perform lead evaluation or abatement work without first obtaining certification from the department. Certification may be issued to perform lead evaluation or abatement work if the business firm employs or will employ sufficient numbers and types of personnel certified by the Department of Health and

Senior Services pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3) to perform lead abatement work and meets all other requirements that the commissioner may establish pursuant to section 23 of P.L.1993, c.288 (C.52:27D-436). The certification shall be in writing, shall contain an expiration date, and shall be signed by the commissioner.

b. A person or business firm shall not undertake a project involving lead abatement work without first obtaining a construction permit for that project pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130). No permit shall be issued for lead abatement work, except to:

(1) an owner undertaking work on his own premises using his own employees, if those employees are certified by the Department of Health and Senior Services pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3);

(2) a homeowner proposing to perform lead abatement work himself on a dwelling unit that he owns and occupies as a primary place of residence; or

(3) a business firm certified pursuant to this section to perform such work.

The issuance of a construction permit to an individual homeowner proposing to perform lead abatement work on a dwelling unit that he owns and occupies as a primary place of residence shall be accompanied by written information developed by the department explaining the dangers of improper lead abatement, procedures for conducting safe lead abatement, and the availability of certified lead abatement contractors, or of any available training for homeowners.

c. Nothing in this section shall be construed to restrict or otherwise affect the right of any business firm to engage in painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, or to engage in lead safe maintenance work or lead hazard control work, but a business firm shall not hold itself out as certified by the department or otherwise represent that it has specialized competency to perform lead evaluation or abatement work unless it has been certified or otherwise specifically authorized pursuant to this section.

A business firm that seeks to engage in lead safe maintenance work or lead hazard control work shall do so using only persons who, prior to engaging in such work, shall have completed such training courses as may be prescribed by the commissioner and provided by a training provider accredited by the Commissioner of Health and Senior Services.

A business firm that utilizes interim controls to reduce the risk of lead-based paint exposure shall utilize only those methods approved by the appropriate federal agencies, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, as may be set forth under 42

U.S.C.s.4851b or those methods set forth in guidelines established by the commissioner, but shall not be required to be certified pursuant to this section unless performing lead abatement.

C.52:27D-437.15 Modification of regulations concerning lead hazards.

24. The Commissioner of Banking and Insurance and the Commissioner of Health and Senior Services shall consult with the Commissioner of Community Affairs and shall modify all regulations concerning lead hazards in accordance with the provisions of P.L.2003, c.311 (C.52:27D-437.1 et al.), to recognize lead hazard control work as an authorized alternative method to lead abatement in control of lead hazards.

25. There is appropriated from the Catastrophic Illness in Children Relief Fund to the Department of Community Affairs for deposit into the "Lead Hazard Control Assistance Fund" the amount of \$2,000,000 for the purpose of providing grants pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.).

26. This act shall take effect 90 days following enactment, except that section 6 shall take effect immediately.

Approved January 20, 2004.

CHAPTER 312

AN ACT concerning stillbirths and amending R.S.26:8-37.

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

1. R.S.26:8-37 is amended to read as follows:

Stillborn child to be registered as fetal death; birth certificate option.

26:8-37. a. A stillborn child shall be registered as a fetal death as required by R.S.26:6-11.

b. (1) The State registrar shall establish a certificate of birth resulting in stillbirth, subject to the provisions of paragraph (2) of this subsection, which shall contain such items as shall be listed on a form provided or approved by the State registrar pursuant to subsection c. of R.S.26:8-24, for an unintended, intrauterine fetal death occurring in this State after a gestational period of 20 or more weeks. This certificate shall be offered to the parent of a stillborn child.

(2) The certificate shall be provided by the State Registrar upon the parent's written request that is transmitted to the State registrar by a licensed health care professional on the parent's behalf.

(3) The person who prepares a certificate pursuant to this subsection shall leave blank any references to the stillborn child's name if the stillborn child's parent does not wish to provide a name for the stillborn child.

(4) The certificate of birth resulting in stillbirth shall be filed with the local registrar of the district in which the birth resulting in stillbirth occurred within three days following receipt by the State registrar of the parent's request for the certificate.

(5) When a birth resulting in stillbirth occurring in this State has not been registered within one year after the date of delivery, a certificate marked "delayed" may be filed and registered.

2. The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

3. This act shall take effect on the 60th day following enactment and shall apply to stillbirths that occurred before, on or after the effective date.

Approved January 20, 2004.

CHAPTER 313

AN ACT concerning school photographers and supplementing chapter 18A of Title 18A of the New Jersey Statutes.

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

C.18A:18A-49.3 Contract for taking yearbook pictures, use of other photographers' photos permitted.

1. A board of education may enter into a contract with a photographer for the taking of pupil yearbook pictures. The hiring of a photographer shall not prohibit a pupil from engaging a photographer of the pupil's choice nor prevent a picture taken by that photographer from appearing in the yearbook if the picture meets the specifications of the yearbook staff.

2. This act shall take effect immediately.

Approved January 20, 2004.

CHAPTER 314

AN ACT concerning drunk driving, amending R.S.39:4-50 and P.L.1992, c.189, and supplementing Title 39 of the Revised Statutes.

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

1. This act shall be known and may be cited as "Florence's Law."
2. R.S.39:4-50 is amended to read as follows:

Driving while intoxicated.

39:4-50. (a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:

(1) For the first offense:

(i) if the person's blood alcohol concentration is 0.08% or higher but less than 0.10%, or the person operates a motor vehicle while under the influence of intoxicating liquor, or the person permits another person who is under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permits another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a motor vehicle, to a fine of not less than \$250 nor more than \$400 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of three months;

(ii) if the person's blood alcohol concentration is 0.10% or higher, or the person operates a motor vehicle while under the influence of narcotic, hallucinogenic or habit-producing drug, or the person permits another person who is under the influence of narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control, or permits another person with a blood alcohol concentration of 0.10% or

more to operate a motor vehicle, to a fine of not less than \$300 nor more than \$500 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than seven months nor more than one year;

(iii) For a first offense, a person also shall be subject to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).

(2) For a second violation, a person shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00, and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Chief Administrator of the New Jersey Motor Vehicle Commission for a license to operate a motor vehicle, which application may be granted at the discretion of the chief administrator, consistent with subsection (b) of this section. For a second violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for two years under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

(3) For a third or subsequent violation, a person shall be subject to a fine of \$1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for 10 years under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

As used in this section, the phrase "narcotic, hallucinogenic or habit-producing drug" includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of

inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L. 1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the forfeiture, suspension or revocation of the driving privilege imposed by the court under this section shall commence immediately, run through the offender's seventeenth birthday and continue from that date for the period set by the court pursuant to paragraphs (1) through (3) of this subsection. A court that imposes a term of imprisonment under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the chief of the Intoxicated Driving Program Unit in the Department of Health and Senior Services; provided that for a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the chief administrator. The sentencing court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with the Rules Governing the Courts of the State of New Jersey, or R.S.39:5-22. Upon sentencing, the court shall forward to the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of \$100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the chief administrator. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the chief administrator, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally

and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The chief administrator shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to establish a program of alcohol education and highway safety, as prescribed by this act.

(e) Any person accused of a violation of this section who is liable to punishment imposed by this section as a second or subsequent offender shall be entitled to the same rights of discovery as allowed defendants pursuant to the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and Drug Abuse and the commission, but subject to the approval of the Division of Alcoholism and Drug Abuse, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving as community treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol and drug education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of \$75.00 for the first offender program or a per diem fee of \$100.00 for the second offender program, as appropriate. Any increases in

the per diem fees after the first full year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the chief administrator.

The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

(g) When a violation of this section occurs while:

(1) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(3) driving through a school crossing as defined in R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution, the convicted person shall: for a first offense, be fined not less than \$500 or more than \$800, be imprisoned for not more than 60 days and have his license to operate a motor vehicle suspended for a period of not less than one year or more than two years; for a second offense, be fined not less than \$1,000 or more than \$2,000, perform community service for a period of 60 days, be imprisoned for not less than 96 consecutive hours, which shall not be suspended or served on probation, nor more than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and have his license to operate a motor vehicle suspended for a period of not less than four years; and, for a third offense, be fined \$2,000, imprisoned for 180 days and have his license to operate a motor vehicle suspended for a period of 20 years; the period of license suspension shall commence upon the completion of any prison sentence imposed upon that person.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under paragraph (1) of this subsection.

It shall not be relevant to the imposition of sentence pursuant to paragraph (1) or (2) of this subsection that the defendant was unaware that the

prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be relevant to the imposition of sentence that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

(h) A court also may order a person convicted pursuant to subsection a. of this section, to participate in a supervised visitation program as either a condition of probation or a form of community service, giving preference to those who were under the age of 21 at the time of the offense. Prior to ordering a person to participate in such a program, the court may consult with any person who may provide useful information on the defendant's physical, emotional and mental suitability for the visit to ensure that it will not cause any injury to the defendant. The court also may order that the defendant participate in a counseling session under the supervision of the Intoxicated Driving Program Unit prior to participating in the supervised visitation program. The supervised visitation program shall be at one or more of the following facilities which have agreed to participate in the program under the supervision of the facility's personnel and the probation department:

(1) a trauma center, critical care center or acute care hospital having basic emergency services, which receives victims of motor vehicle accidents for the purpose of observing appropriate victims of drunk drivers and victims who are, themselves, drunk drivers;

(2) a facility which cares for advanced alcoholics or drug abusers, to observe persons in the advanced stages of alcoholism or drug abuse; or

(3) if approved by a county medical examiner, the office of the county medical examiner or a public morgue to observe appropriate victims of vehicle accidents involving drunk drivers.

As used in this section, "appropriate victim" means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant.

If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents to discuss the visitation and its effect on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the

jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage.

The Supreme Court may adopt court rules or directives to effectuate the purposes of this subsection.

(i) In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of \$100, of which amount \$50 shall be payable to the municipality in which the conviction was obtained and \$50 shall be payable to the Treasurer of the State of New Jersey for deposit into the General Fund.

3. Section 1 of P.L.1992, c.189 (C.39:4-50.14) is amended to read as follows:

C.39:4-50.14 Penalties for underage person operating motor vehicle after consuming alcohol.

1. Any person under the legal age to purchase alcoholic beverages who operates a motor vehicle with a blood alcohol concentration of 0.01% or more, but less than 0.08%, by weight of alcohol in his blood, shall forfeit his right to operate a motor vehicle over the highways of this State or shall be prohibited from obtaining a license to operate a motor vehicle in this State for a period of not less than 30 or more than 90 days beginning on the date he becomes eligible to obtain a license or on the day of conviction, whichever is later, and shall perform community service for a period of not less than 15 or more than 30 days.

In addition, the person shall satisfy the program and fee requirements of an Intoxicated Driver Resource Center or participate in a program of alcohol education and highway safety as prescribed by the chief administrator.

The penalties provided under the provisions of this section shall be in addition to the penalties which the court may impose under N.J.S.2C:33-15, R.S.33:1-81, R.S.39:4-50 or any other law.

4. This act shall take effect immediately.

Approved January 20, 2004.

CHAPTER 315

AN ACT concerning driving while under the influence, amending and supplementing R.S.39:4-50 and R.S.39:4-51.

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

1. P.L.2003, c.315 shall be known and may be cited as "Michael's Law."

2. R.S.39:4-50 is amended to read as follows:

Driving while intoxicated.

39:4-50. (a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:

(1) For the first offense:

(i) if the person's blood alcohol concentration is 0.08% or higher but less than 0.10%, or the person operates a motor vehicle while under the influence of intoxicating liquor, or the person permits another person who is under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permits another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a motor vehicle, to a fine of not less than \$250 nor more than \$400 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of three months;

(ii) if the person's blood alcohol concentration is 0.10% or higher, or the person operates a motor vehicle while under the influence of narcotic, hallucinogenic or habit-producing drug, or the person permits another person

who is under the influence of narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control, or permits another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle, to a fine of not less than \$300 nor more than \$500 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than seven months nor more than one year;

(iii) For a first offense, a person also shall be subject to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).

(2) For a second violation, a person shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00, and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Chief Administrator of the New Jersey Motor Vehicle Commission for a license to operate a motor vehicle, which application may be granted at the discretion of the chief administrator, consistent with subsection (b) of this section. For a second violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for two years under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

(3) For a third or subsequent violation, a person shall be subject to a fine of \$1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked

for 10 years under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

As used in this section, the phrase "narcotic, hallucinogenic or habit-producing drug" includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the forfeiture, suspension or revocation of the driving privilege imposed by the court under this section shall commence immediately, run through the offender's seventeenth birthday and continue from that date for the period set by the court pursuant to paragraphs (1) through (3) of this subsection. A court that imposes a term of imprisonment for a first or second offense under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the chief of the Intoxicated Driving

Program Unit in the Department of Health and Senior Services. For a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the chief administrator. The sentencing court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with the Rules Governing the Courts of the State of New Jersey, or R.S.39:5-22. Upon sentencing, the court shall forward to the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of \$100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the chief administrator. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the chief administrator, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall,

however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The chief administrator shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to establish a program of alcohol education and highway safety, as prescribed by this act.

(e) Any person accused of a violation of this section who is liable to punishment imposed by this section as a second or subsequent offender shall be entitled to the same rights of discovery as allowed defendants pursuant to the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and Drug Abuse and the commission, but subject to the approval of the Division of Alcoholism and Drug Abuse, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving as community treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol and drug education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an

Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of \$75.00 for the first offender program or a per diem fee of \$100.00 for the second offender program, as appropriate. Any increases in the per diem fees after the first full year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the chief administrator.

The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

(g) When a violation of this section occurs while:

(1) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(3) driving through a school crossing as defined in R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution, the convicted person shall: for a first offense, be fined not less than \$500 or more than \$800, be imprisoned for not more than 60 days and have his license to operate a motor vehicle suspended for a period of not less than one year or more than two years; for a second offense, be fined not less than \$1,000 or more than \$2,000, perform community service for a period of 60 days, be imprisoned for not less than 96 consecutive hours, which shall not be suspended or served on probation, nor more than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and have his license to operate a motor vehicle suspended for a period of not less than four years; and, for a third offense, be fined \$2,000, imprisoned for 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center, and have his license to operate a motor vehicle suspended for a period of 20 years; the period of license suspension shall commence upon the completion of any prison sentence imposed upon that person.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under paragraph (1) of this subsection.

It shall not be relevant to the imposition of sentence pursuant to paragraph (1) or (2) of this subsection that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be relevant to the imposition of sentence that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

(h) A court also may order a person convicted pursuant to subsection a. of this section, to participate in a supervised visitation program as either a condition of probation or a form of community service, giving preference to those who were under the age of 21 at the time of the offense. Prior to ordering a person to participate in such a program, the court may consult with any person who may provide useful information on the defendant's physical, emotional and mental suitability for the visit to ensure that it will not cause any injury to the defendant. The court also may order that the defendant participate in a counseling session under the supervision of the Intoxicated Driving Program Unit prior to participating in the supervised visitation program. The supervised visitation program shall be at one or more of the following facilities which have agreed to participate in the program under the supervision of the facility's personnel and the probation department:

(1) a trauma center, critical care center or acute care hospital having basic emergency services, which receives victims of motor vehicle accidents for the purpose of observing appropriate victims of drunk drivers and victims who are, themselves, drunk drivers;

(2) a facility which cares for advanced alcoholics or drug abusers, to observe persons in the advanced stages of alcoholism or drug abuse; or

(3) if approved by a county medical examiner, the office of the county medical examiner or a public morgue to observe appropriate victims of vehicle accidents involving drunk drivers.

As used in this section, "appropriate victim" means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant.

If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or

is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents to discuss the visitation and its effect on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage.

The Supreme Court may adopt court rules or directives to effectuate the purposes of this subsection.

(i) In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of \$100, of which amount \$50 shall be payable to the municipality in which the conviction was obtained and \$50 shall be payable to the Treasurer of the State of New Jersey for deposit into the General Fund.

3. R.S.39:4-51 is amended to read as follows:

Sentence for violation of 39:4-50; service, work release; rules, regulations.

A person who has been convicted of a first or second violation of section 39:4-50 of this Title, and in pursuance thereof has been imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not, after commitment, be released therefrom until the term of imprisonment imposed has been served. A person imprisoned in the county jail or workhouse may in the discretion of the court, be released on a work release program.

No warden or other officer having custody of the county jail or workhouse shall release therefrom a person so committed, unless the person has been released by the court on a work release program, until the sentence has been served. A person sentenced to an inpatient rehabilitation program may upon petition by the treating agency be released, by the court, to an outpatient rehabilitation program for the duration of the original sentence.

Nothing in this section shall be construed to interfere in any way with the operation of a writ of habeas corpus, a proceeding in lieu of the prerogative writs, or an appeal.

The chief administrator shall adopt such rules and regulations to effectuate the provisions of this section as he shall deem necessary.

4. This act shall take effect immediately.

Approved January 20, 2004.

JOINT RESOLUTIONS

(2057)

JOINT RESOLUTION NO. 1

A JOINT RESOLUTION designating April of each year as "School Psychologists Month."

WHEREAS, School psychologists facilitate the positive educational, social and emotional development of students; and

WHEREAS, School psychologists advocate for the rights of all children to receive a public education tailored to meet their individual needs; and

WHEREAS, Since 1911, the School Psychologists of New Jersey have provided public schools with comprehensive psychological services such as consultation, counseling and psycho-educational assessment; and

WHEREAS, The Senate and General Assembly of the State of New Jersey are pleased to note and acknowledge April of each year as "School Psychologists Month" in the Garden State; now, therefore,

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

C.36:2-78 "School Psychologists Month," April; designated.

1. The month of April of each year is designated as "School Psychologists Month" in the State of New Jersey.

C.36:2-79 Observance of "School Psychologists Month."

2. The Governor and the Legislature hereby pay tribute and commend school psychologists for their tireless efforts and demonstrated concern and compassion on behalf of students, parents and teachers and call upon the citizenry of New Jersey to participate fittingly in the observance of "School Psychologists Month."

3. This joint resolution shall take effect immediately.

Approved April 17, 2003.

JOINT RESOLUTION NO. 2

A JOINT RESOLUTION revoking Joint Resolution No. IV of 1868 which sought to withdraw New Jersey's ratification of the Fourteenth Amendment to the United States Constitution.

New Jersey State Library

WHEREAS, The Fourteenth Amendment to the United States Constitution granted citizenship to, and protected the civil liberties of, freed slaves; and

WHEREAS, The Fourteenth Amendment also prohibits states from abridging the privileges or immunities of any citizen, depriving any person of life, liberty, or property without due process of law, or denying any person equal protection of the laws; and

WHEREAS, The rights guaranteed by the Fourteenth Amendment are part of the foundation of our free society; and

WHEREAS, In 1866, the New Jersey Legislature acted to ensure these rights by ratifying the Fourteenth Amendment; and

WHEREAS, Thereafter, the New Jersey Legislature, in 1868, attempted to withdraw its ratification of this amendment by passage of Joint Resolution No. IV; and

WHEREAS, Both the Federal Secretary of State and the Congress refused to recognize New Jersey's attempt to withdraw ratification and the Fourteenth Amendment became a part of the United States Constitution on July 20, 1868; and

WHEREAS, The attempt to withdraw New Jersey's ratification of the Fourteenth Amendment is contrary to this State's long tradition of respect for, and protection of, the civil rights of all persons; and

WHEREAS, Even though the attempt to withdraw New Jersey's ratification of the Fourteenth Amendment was without effect, there is, nevertheless, a need to rectify this misguided action; now, therefore,

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

1. Joint Resolution No. IV of 1868 which attempted to withdraw New Jersey's ratification of the Fourteenth Amendment is hereby revoked.

2. Duly authenticated copies of this Joint Resolution shall be transmitted to the federal Secretary of State, the presiding officers of the Congress of the United States, and each member of New Jersey's congressional delegation.

3. This Joint Resolution shall take effect immediately.

Approved April 23, 2003.

JOINT RESOLUTION NO. 3

A JOINT RESOLUTION memorializing the United States Department of Veterans' Affairs to locate a new national cemetery in New Jersey.

WHEREAS, Since the days of the Civil War, the federal government has honored veterans with a final resting place and lasting memorial to commemorate their service to our grateful nation; and

WHEREAS, Currently, the National Cemetery Administration is responsible for 119 national cemeteries in 39 states and Puerto Rico; and

WHEREAS, The two national cemeteries located in New Jersey, Beverly National Cemetery, in Beverly (est. 1862) and Finn's Point National Cemetery, in Salem (est. 1875), have the capacity to inter only cremated remains for perhaps the next five to eight years; and

WHEREAS, Beverly and Finn's Point national cemeteries have little prospect for expansion; and

WHEREAS, Of New Jersey's over 600,000 veterans, 475,000 are age 50 or older and 287,000 are age 65 or older; and

WHEREAS, The National Cemetery Administration is currently in the process of establishing new national cemeteries and should give serious consideration to the needs of United States veterans currently residing in New Jersey; now, therefore,

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

1. The State of New Jersey solemnly memorializes the United States Department of Veterans' Affairs to locate a national cemetery in New Jersey in order to expand burial space for the aging veteran population residing in New Jersey.

2. Duly authenticated copies of this joint resolution shall be transmitted to the Secretary, Deputy Secretary, and Under Secretary for Memorial Affairs of the United States Department of Veterans' Affairs, and each member of Congress elected thereto from New Jersey.

3. This joint resolution shall take effect immediately.

Approved June 30, 2003.

JOINT RESOLUTION NO. 4

A JOINT RESOLUTION urging the Department of Health and Senior Services to encourage research and awareness of fibrodysplasia ossificans progressiva within the health care community and recognizes 2002-2011 as the National Bone and Joint Decade.

WHEREAS, Fibrodysplasia ossificans progressiva is a rare genetic condition in which the body makes additional bone in locations where bone should not form, such as within muscles, tendons, ligaments and other connective tissues; and

WHEREAS, There is no cure for fibrodysplasia ossificans progressiva, and as the patient ages it progresses at varied rates, leading to stiffness, eventual lack of body movement and death; and

WHEREAS, Fibrodysplasia ossificans progressiva affects an average of 2,500 people worldwide, with 10 cases confirmed in New Jersey and 200 cases confirmed nationwide; and

WHEREAS, The symptoms of fibrodysplasia ossificans progressiva usually begin in the first or second decade of life, with the majority of patients diagnosed by the age of 10; and

WHEREAS, The rarity of fibrodysplasia ossificans progressiva results in misdiagnoses by physicians; thus, patients endure many years of unneeded chemotherapy and other treatments, which cause inflammation and increased activity in the disorder, taking the healthier years off of their lives; and

WHEREAS, There is only one known research facility worldwide, the University of Pennsylvania, currently investigating a cure for fibrodysplasia ossificans progressiva; and

WHEREAS, The Department of Health and Senior Services should encourage research and awareness of fibrodysplasia ossificans progressiva within the health care community so that we can begin to better comprehend the complexities of the disorder and find a cure; and

WHEREAS, President George W. Bush issued a proclamation observing 2002-2011 as National Bone and Joint Decade, in hopes of making advances in prevention, diagnosis, treatment and research in the field of musculoskeletal conditions; and

WHEREAS, It is appropriate that this State join the nation in recognizing 2002-2011 as National Bone and Joint Decade; now, therefore,

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

1. The Legislature and Governor urge the Department of Health and Senior Services to encourage the health care community in New Jersey to pursue research in fibrodysplasia ossificans progressiva and increase awareness of the condition through appropriate programs and activities.

2. The Legislature and Governor recognize 2002-2011 as the National Bone and Joint Decade and call upon the health care community in New Jersey to pursue research and increase awareness of all musculoskeletal structural disorders.

3. This joint resolution shall take effect immediately.

Approved January 9, 2004.

AMENDMENTS
ADOPTED IN 2003
TO THE 1947 CONSTITUTION

(2065)

Amendments Adopted in 2003 to the 1947 Constitution

ARTICLE VIII, SECTION II, PARAGRAPH 6

Amend Article VIII, Section II, paragraph 6 to read as follows:

6. There shall be credited annually to a special account in the General Fund an amount equivalent to 4% of the revenue annually derived from the tax imposed pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as amended and supplemented, or any other State law of similar effect.

The amount annually credited pursuant to this paragraph shall be dedicated and shall be appropriated from time to time by the Legislature only for the following purposes: paying or financing costs incurred by the State for the remediation of discharges of hazardous substances, which costs may include performing necessary operation and maintenance activities relating to remedial actions and costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge; providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom; providing funding, including the provision of loans or grants, for the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge; and for paying or financing the cost of water quality point and nonpoint source pollution monitoring, watershed based water resource planning and management, and nonpoint source pollution prevention projects.

It shall not be competent for the Legislature, under any pretense whatever, to borrow, appropriate, or use the amount credited to the special account pursuant to this paragraph, or any portion thereof, for any purpose or in any manner other than as enumerated in this paragraph. It shall not be competent for the Legislature, under any pretense whatever, to borrow, appropriate, or use the amount credited to the special account pursuant to

this paragraph, or any portion thereof, for the payment of the principal or interest on any general obligation bond that was approved by the voters prior to this paragraph becoming part of this Constitution.

(a) A minimum of one-sixth of the amount annually credited pursuant to this paragraph, or a minimum of an amount equal to \$5,000,000.00 per year, whichever is less, shall be dedicated, and shall be appropriated from time to time by the Legislature, only for paying or financing the cost of water quality point and nonpoint source pollution monitoring, watershed based water resource planning and management, and nonpoint source pollution prevention projects.

(b) A minimum of one-third of the amount annually credited pursuant to this paragraph shall be dedicated, and shall be appropriated from time to time by the Legislature, only for providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and for providing funding, including the provision of loans or grants, for the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge. Of any amount dedicated pursuant to this subparagraph (b) but not expended prior to January 1, 2004, fifty percent of that amount shall be expended on funding for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and fifty percent shall be expended on funding the costs of the remediation of discharges of hazardous substances, including costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge.

Commencing January 1, 2004 and ending December 31, 2005, fifty percent of the moneys dedicated pursuant to this subparagraph (b) shall be appropriated for funding the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and fifty percent shall be appropriated for funding the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge.

Commencing January 1, 2006 and ending December 31, 2021, forty percent of the moneys dedicated pursuant to this subparagraph (b) shall be

appropriated for funding the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and sixty percent shall be appropriated for funding the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge.

Commencing January 1, 2004, up to \$2,000,000.00 per year, which shall be taken from the amount appropriated pursuant to this subparagraph (b) for the costs of the remediation of discharges of hazardous substances, may be expended for the costs of a State underground storage tank inspection program, which costs may include the direct but not indirect program administrative costs incurred by the State for the employment of inspectors and a compliance and enforcement staff, and the purchase of vehicles and equipment necessary for the implementation thereof.

All moneys derived from repayments of any loan issued from the amount dedicated pursuant to this subparagraph (b) shall be dedicated, and shall be appropriated from time to time by the Legislature, only for the purposes authorized pursuant to this subparagraph (b). The dedication of moneys derived from loan repayments shall not expire.

Except for moneys that may be expended for the costs of a State underground storage tank inspection program, no moneys appropriated pursuant to this subparagraph (b) may be expended on any direct or indirect administrative costs of the State or any of its departments, agencies, or authorities.

No moneys appropriated pursuant to this subparagraph (b) may be expended on any upgrade, replacement, or closure of any underground storage tank, or for the remediation of any discharge therefrom, for any underground storage tank owned by the State or any of its departments, agencies, or authorities, or for costs incurred by the State for the remediation of discharges of hazardous substances.

Commencing on January 1, 2022, the moneys dedicated pursuant to this subparagraph (b) may be appropriated from time to time by the Legislature: for providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom; for providing funding, including the provision of loans or grants, for the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge;

or for the costs of a State underground storage tank inspection program, in an amount up to \$2,000,000.00 per year.

(c) A minimum of one-half of the amount annually credited pursuant to this paragraph shall be dedicated, and shall be appropriated from time to time by the Legislature, only for paying or financing costs incurred by the State for the remediation of discharges of hazardous substances, which costs may include performing necessary operation and maintenance activities relating to remedial actions and costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge. No moneys appropriated pursuant to this subparagraph (c) may be expended for any indirect administrative costs of the State, its departments, agencies, or authorities. No more than nine percent of the moneys annually credited pursuant to this paragraph, which shall be taken from the amount dedicated pursuant to this subparagraph (c), may be expended for any direct program administrative costs of the State, its departments, agencies, or authorities. If the Legislature dedicates for the purposes of this subparagraph (c) any moneys above the minimum that is required to be dedicated pursuant to this subparagraph (c), those moneys may not be expended for any direct or indirect administrative costs of the State, its departments, agencies, or authorities.

Approved November 4, 2003.
Effective December 4, 2003.

ARTICLE VIII, SECTION II, PARAGRAPH 7

Amend Article VIII, Section II, paragraph 7 to read as follows:

7. (a) Commencing July 1, 1999, there shall be credited in each State fiscal year, until June 30, 2009, to a special account in the General Fund \$98,000,000 from the State revenue annually collected from the State tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), as amended and supplemented, or from any other State law of similar effect. The dedication and use of those moneys credited pursuant to this subparagraph shall be subject and subordinate to (1) all appropriations of revenues from taxes made by laws enacted prior to the effective date of this paragraph in accordance with Article VIII, Section II, paragraph 3 of the State Constitution in order to provide the ways and means to pay the principal and interest on bonds of the State presently outstanding or authorized to be issued under those laws, or (2) any other use of those

revenues enacted into law prior to the effective date of this paragraph. The amount credited each State fiscal year pursuant to this subparagraph shall be dedicated and shall be appropriated from time to time by the Legislature only to: provide funding, including loans or grants, for the acquisition and development of lands for recreation and conservation purposes, for the preservation of farmland for agricultural or horticultural use and production, and for historic preservation; and satisfy any payments relating to bonds, notes, or other obligations, including refunding bonds, issued by an authority or similar entity established by law to provide funding, including loans and grants, for the acquisition and development of lands for recreation and conservation purposes, for the preservation of farmland for agricultural or horticultural use and production, and for historic preservation.

(b) Commencing July 1, 2009 and ending June 30, 2029, there shall be credited in each State fiscal year to a special account in the General Fund from the State revenue annually collected from the State tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), as amended and supplemented, or from any other State law of similar effect, the lesser of \$98,000,000 or the amount necessary in each State fiscal year to satisfy any payments relating to bonds, notes, or other obligations, including refunding bonds, issued by an authority or similar entity established by law to provide funding, including loans and grants, for the acquisition and development of lands for recreation and conservation purposes, for the preservation of farmland for agricultural or horticultural use and production, and for historic preservation. The dedication and use of those moneys credited pursuant to this subparagraph shall be subject and subordinate to (1) all appropriations of revenues from taxes made by laws enacted prior to the effective date of this paragraph in accordance with Article VIII, Section II, paragraph 3 of the State Constitution in order to provide the ways and means to pay the principal and interest on bonds of the State presently outstanding or authorized to be issued under those laws, or (2) any other use of those revenues enacted into law prior to the effective date of this paragraph. The amount credited each State fiscal year pursuant to this subparagraph shall be dedicated and shall be appropriated from time to time by the Legislature only to satisfy any payments relating to bonds, notes, or other obligations, including refunding bonds, issued by an authority or similar entity established by law to provide funding, including loans and grants, for the acquisition and development of lands for recreation and conservation purposes, for the preservation of farmland for agricultural or horticultural use and production, and for historic preservation.

(c) Moneys credited to the special account pursuant to this paragraph shall not be used for (1) payments related to bonds, notes, or other obligations which in aggregate principal amount exceed \$1,150,000,000

plus costs of issuance; or (2) payments relating to bonds, notes, or other obligations, except refunding bonds, issued after June 30, 2009.

(d) The authority or similar entity established by law as described in this paragraph shall consist of members appointed by the Governor and of members appointed by the Legislature.

(e) All moneys derived from repayments of any loan issued from the amounts dedicated pursuant to subparagraph (a) of this paragraph, and all income derived from the investment of moneys in the special account established pursuant to this paragraph, shall be credited to that special account, and shall be dedicated and shall be appropriated from time to time by the Legislature only for the purpose of providing funding, including loans or grants, for the acquisition and development of lands for recreation and conservation purposes, for the preservation of farmland for agricultural or horticultural use and production, and for historic preservation. Notwithstanding any provision of this paragraph to the contrary, the dedication of moneys derived from loan repayments and investments shall not expire.

(f) It shall not be competent for the Legislature, under any pretense whatever, to borrow, appropriate, or use the amounts credited to the special account established pursuant to this paragraph, or any portion thereof, for any purpose or in any manner other than as enumerated in this paragraph.

Approved November 4, 2003.

Effective December 4, 2003.

EXECUTIVE ORDERS

(2073)

EXECUTIVE ORDER NO. 45

WHEREAS, The citizens and businesses of the State of New Jersey and the nation rely heavily on traditional energy generation sources, which can negatively impact our environment, health, economy and security; and

WHEREAS, Those traditional energy generation sources can cause pollution of our air and water; emit "greenhouse gases" that contribute to global warming and sea level rise; encourage reliance on large centralized power plants, making our energy resources more vulnerable to potential disruption; create dependency on foreign energy resources; and leave us vulnerable to potentially volatile energy prices; and

WHEREAS, Renewable energy sources offer an energy alternative that would lead to improved air and water environmental quality; decrease our dependence on foreign energy sources and susceptibility to potentially volatile traditional energy markets; decrease our reliance on centralized power plants; ease the strain on our energy infrastructure; offer opportunity for job creation and economic development by attracting these emerging industries to the State of New Jersey; and, when considering all costs to society, are less costly than traditional energy sources; and

WHEREAS, This Administration recognizes these benefits, and is dedicated to promoting the use and production of renewable energy; and

WHEREAS, Leaders in business, labor, academia, the energy industry, and environmental and consumer advocates voiced shared support for the promotion of renewable energy in New Jersey at the Governor's Energy Summit, which convened on December 11, 2002; and

WHEREAS, The "Electricity Discount and Energy Competition Act" ("EDECA"), specifically requires the New Jersey Board of Public Utilities ("BPU") to adopt renewable energy portfolio standards ("RPS") to ensure each electric power supplier and basic generation service provider supplies electricity from renewable energy sources in the electricity sold to retail customers; and

WHEREAS, The RPS play a significant role in helping the State achieve its goal of promoting renewable energy and must be examined closely to ensure that these requirements impact our State's energy market and consumption in an efficient and environmentally sound manner;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created the Renewable Energy Task Force ("Task Force") to examine the Renewable Portfolio Standards (RPS) for Class I energy sources, which includes electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner.

2. The Task Force shall review the current regulatory framework that governs the RPS and recommend changes to that framework to better enable the BPU to implement RPS that reflect the changing goals and needs of the State.

3. The Task Force shall be chaired by the President of the BPU and composed of 16 members, appointed by the Governor, as follows:

- a) The Commissioner of the Department of Environmental Protection ("DEP"), or his designee(s);
- b) The Ratepayer Advocate, or her designee;
- c) Two representatives from public interest organizations;
- d) Two representatives from the utility industry;
- e) Three representatives from the renewable energy industry;
- f) Two representatives of wholesale energy providers; and
- g) Four national experts or academics in renewable energy sources or implementation of these technologies.

4. The Task Force shall:

- a) Examine whether the total annual percentages of Class I renewable energy that each electric power supplier and basic generation service provider must sell to retail customers in New Jersey, and included in the existing RPS, should be increased;
- b) Recommend the specific time period over which any incremental increase in the Class I renewable energy percentage requirements should take place and the phase-in schedule of any recommended increases;
- c) Recommend whether a required percentage of Class I renewable energy should come from specific technologies or fuels and, if so, identify amounts that should be required;

- d) Recommend whether any portion of the required percentage of Class I renewable energy should be required to come from generation sources located within the State of New Jersey;
- e) Recommend whether any portion of the required percentage of Class I renewable energy should come from new generation sources that have become available after a specific date and, if so, identify that date;
- f) Propose improvements in the measurement, tracking and verification systems for Class I renewable energy sources, including those for small distributed generation sources not connected to the transmission grid;
- g) Consider measures to assist electric power suppliers and basic generation service providers with compliance with RPS requirements;
- h) Provide a preliminary estimate of the possible cost and other impacts on the State's electricity consumers that may result from the Task Force's recommendations and proposals; and
- i) Examine other related issues.

5. The Task Force shall issue a report to the Governor by March 31, 2003, identifying specific recommendations on the aforementioned issues.

6. The Task Force is authorized to call upon any department, office, division and agency of State government to provide such data, information, material, personnel and assistance as deemed necessary to discharge its responsibilities under this Order. Each department, office, division and agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Task Force and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order.

7. This Order shall take effect immediately.

Dated January 27, 2003.

EXECUTIVE ORDER NO. 46

WHEREAS, The use of video lotteries are being considered or have been implemented in other states; and

WHEREAS, Institution of a video lottery could have the potential for generating new State revenues; and

WHEREAS, A variety of legal, economic and policy issues would be associated with the institution of a video lottery system in New Jersey; and

WHEREAS, It is important that these issues be thoroughly reviewed in order to provide a sound basis for decision-making;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established a Video Lottery Study Commission ("Commission") to review the legal, policy and economic issues associated with the use of video lottery terminals in New Jersey.

2. The Commission shall consist of the Attorney General, a representative of the New Jersey Sports and Exposition Authority, a representative of the Casino Control Commission and five (5) distinguished citizens appointed by the Governor to serve as public members. The Governor shall designate the chairperson of the Commission.

3. The Commission shall report on its review and examination of video lottery issues within 90 days of the appointment of its members.

4. The Commission shall meet at the call of the chairperson. The Commission shall be staffed by the Department of the Treasury, but shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

5. This Order shall take effect immediately.

Dated February 3, 2003.

EXECUTIVE ORDER NO. 47

WHEREAS, Executive Order No. 24 (2002) authorized the New Jersey Economic Development Authority (NJEDA) to establish a subsidiary corporation, with responsibility for the school construction program; and

WHEREAS, The NJEDA has created the Schools Corporation to oversee school facility projects; and

WHEREAS, The composition of the Board of Directors of the Schools Corporation was delineated in Executive Order No. 24 (2002); and

WHEREAS, In order for the Schools Corporation, its Board of Directors and its Chief Executive Officer to better monitor the implementation of the school facilities program, and to audit the expenditure of the substantial funding provided by the State for the program, it is advisable to amend the membership of the Board of Directors to add the Attorney General;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 24 (2002) shall remain in full force and effect except as modified herein.

2. Paragraph 1(a) of Executive Order No. 24 (2002) is hereby amended as follows:

The creation of a corporation Board of Directors consisting of the following members: the Attorney General; Commissioner of Education; Commissioner of Labor; Commissioner of Community Affairs; State Treasurer; CEO/Secretary of Commerce and Economic Growth Commission; Executive Director of EDA; Member of the Governor's Executive Staff; three public members of the EDA Board of Directors selected by the Governor; and two members of the public to be appointed by the Governor.

3. This Order shall take effect immediately.

Dated February 7, 2003.

EXECUTIVE ORDER NO. 48

WHEREAS, Beginning on February 16, 2003, severe weather conditions, including snow, winds and freezing temperatures have made State roadways hazardous to travel in parts of this State; and

WHEREAS, Snow accumulations make it difficult or impossible for citizens to obtain the necessities of life as well as essential services such as police, fire and first aid; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-33 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a State of Emergency presently exists in the State of New Jersey.

I hereby:

1. AUTHORIZE, in accordance with the Laws of 1963, Chapter 109 (N.J.S.A.38A:2-4) and the Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1), the Adjutant General to order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

2. EMPOWER, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A.App.A:9-33 et seq.) as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any areas, that, in the State Director's discretion, is deemed necessary for the protection of the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

3. AUTHORIZE the Attorney General, pursuant to the provisions of N.J.S.A.39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress

from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Superintendent of State Police within their respective municipalities.

4. AUTHORIZE the State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

5. AUTHORIZE AND EMPOWER the State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure or vehicle during the course of this emergency.

6. RESERVE THE RIGHT, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-34), as supplemented and amended to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

7. DIRECT that the heads of any agency or instrumentality of the State government with authority to promulgate rules may, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management, waive, suspend or modify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

8. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated February 16, 2003.

EXECUTIVE ORDER NO. 49

WHEREAS, Executive Order No. 48 (2003), declaring a state of emergency, was issued on February 16, 2003 because of severe weather conditions; and

WHEREAS, The severity of the conditions necessitating the declaration of a state of emergency has eased;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT that the state of emergency declared in Executive Order No. 48 is terminated effective at 12 noon on February 18, 2003.

Dated February 18, 2003.

EXECUTIVE ORDER NO. 50

WHEREAS, The President of the United States has authorized the Secretary of Defense to call up select members of the Reserve and National Guard to active duty in response to the continuing Global War on Terrorism, potential armed conflict with Iraq, and heightened tensions with North Korea; and

WHEREAS, The President of the United States has also authorized the Secretary of Homeland Security to similarly call up members of the Coast Guard Reserve; and

WHEREAS, Reserve and National Guard members who are activated during this crisis situation serve a vital national interest for which they deserve the full support of the citizens of this State; and

WHEREAS, The State of New Jersey recognizes that a strong, ready Reserve and National Guard are essential to the defense of this country and vital to this State in time of emergency or natural disaster; and

WHEREAS, The State of New Jersey encourages its employees to serve in the Reserve and National guard and recognizes the personal and economic sacrifices of its employees who are called to active duty during the Middle East crisis;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. New Jersey State employees who are called to active duty in response to the continuing Global War on Terrorism, potential armed conflict with Iraq, and heightened tensions with North Korea shall be entitled upon termination of active duty to return to State employment with full seniority and benefits consistent with State and federal military reemployment and seniority rights.

2. During active duty for the duration of their activation, these State employees shall be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military base pay, following the exhaustion of statutory entitlements to full pay.

3. These State employees shall be entitled to State employees health benefits, life insurance and pension coverage during active duty service for which they receive differential salary as prescribed in this order as if they were on paid leave of absence.

4. If a State employee's military base pay is greater than his or her State salary, such that he or she would not receive differential pay under paragraph 2 of this Order, that State employee shall, nonetheless, be entitled to State employee health benefits, life insurance and pension coverage during active duty service, with the State employee's contributory portion of those benefits and programs to be paid by the employee upon his or her return to State employment, after completion of active duty.

5. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to her such information, personnel and assistance as necessary to accomplish the purposes of this Order.

6. This Order shall take effect immediately.

Dated February 27, 2003.

EXECUTIVE ORDER NO. 51

WHEREAS, The lives of many New Jersey women are impacted by congenital bleeding disorders; and

WHEREAS, The failure to correctly diagnose congenital bleeding disorders in women impacts on their health and well-being and may lead to unnecessary hysterectomies and an increased risk from bleeding at the time of surgery; and

WHEREAS, There is a Statewide health need to ensure that women with congenital bleeding disorders are appropriately diagnosed and treated; and

WHEREAS, The women of New Jersey need to be made aware of the existing medical treatments for congenital bleeding disorders;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Governor's Task Force on Women and Bleeding Disorders ("Task Force"). The Task Force shall study the occurrence, methods and access to diagnosis and treatment options for women with congenital bleeding disorders and heighten awareness of this issue.

2. The Task Force shall consist of the following fifteen members:

a. The Commissioner of the Department of Health and Senior Services, or his designee, and the Commissioner of the Department of Human Services or her designee.

b. Thirteen public members appointed by the Governor, including one New Jersey licensed obstetrician/ gynecologist, two New Jersey licensed hematologists, one New Jersey licensed nurse, one representative from the Hemophilia Association of New Jersey, and at least three members who are women currently suffering a bleeding disorder or are advocates of such women. The Chair shall be appointed by the Governor from among the public members.

3. The Task Force shall:

a. Review current information and data describing the problem of undiagnosed bleeding disorders in women.

b. Define the need for appropriate testing and access to diagnosis and treatment options for women with bleeding disorders.

c. Make recommendations designed to address identified problems and concerns related to bleeding disorders including, but not limited to, education of targeting medical and consumer communities.

4. The Task Force is authorized to call upon any department, office, division or agency of this State to supply it with data and other information or assistance that the Task Force deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate with the Task Force and to furnish it with such information and assistance as is necessary to accomplish the purposes of this Order.

5. The Task Force shall report to the Governor, not later than one year after the date of its initial meeting, on the Task Force's progress and findings. The work of this Task Force shall be concluded upon completion of the report to the Governor and shall be dissolved thirty (30) days from the date of that report.

6. This Order shall take effect immediately.

Dated March 7, 2003.

EXECUTIVE ORDER NO. 52

WHEREAS, It appears imminent that the United States will become engaged in an armed conflict with the country of Iraq; and

WHEREAS, As a result, the Federal Department of Homeland Security has begun "Operation Liberty Shield," to increase security and readiness in the United States, and have asked the states to cooperate in this effort; and

WHEREAS, The United States Department of Homeland Security has raised the national terror threat level to "high alert"; signaling a high risk of a terrorist attack; and

WHEREAS, Since September 11th 2001, New Jersey law enforcement, National Guard and emergency management personnel have been engaged in an ongoing cooperative effort to vigilantly protect our State and its citizens from terrorism, with an appropriate emphasis on our State's critical transportation systems and infrastructure; and

WHEREAS, The National Guard's assistance is currently desirable to work in a cooperative operation with the New Jersey State Police, the Port Authority of New York and New Jersey as well as other law enforce-

ment agencies to secure key locations, such as New Jersey's airports, bridges and tunnels, from potential terrorism;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. In accordance with New Jersey Statutes 38A:2-1 et seq., I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty all such members of the New Jersey National Guard that, in his judgment, are necessary to protect airports, tunnels and bridges and to provide aid to any other locality where there is a threat or danger to the public health, safety and welfare. He may authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

2. This Executive Order shall take effect immediately.

Dated March 19, 2003.

EXECUTIVE ORDER NO. 53

WHEREAS, The people of the State of New Jersey rely upon the courageous men and women of the fire departments of this State to protect them from the pervasive danger presented by fire and other emergencies; and

WHEREAS, The State of New Jersey has a compelling interest in guaranteeing that the fire departments of the State, both career and volunteer, are adequately trained and equipped to respond to catastrophic damage and loss; and

WHEREAS, The terrorist attacks of September 11, 2001 have demonstrated the need for greater cooperation and superior channels of communication between municipal fire departments and State, county and federal agencies to ensure the ability of the State's fire departments to respond to a catastrophic event or terrorist attack; and

WHEREAS, The fire departments of this State could benefit from more efficient, more economical, and safety sensitive training; and

WHEREAS, The fire departments of the State of New Jersey could benefit from group purchasing;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Governor's Fire Service and Safety Task Force, hereinafter referred to as the Task Force.

2. The members of the Task Force shall consist of:

The Commissioner of the Department of Community Affairs, or her designee

- The Attorney General, or his designee
- The Director of the Division of Fire Safety
- The President of the Professional Firefighters Association of New Jersey, or his designee
- The President of the New Jersey Firemen's Benevolent Association, or his designee
- The President of the New Jersey Association of Fire Districts, or his designee
- The President of the New Jersey State Fire Chiefs Association, or his designee
- The President of the New Jersey State Association of County Fire Marshals, or his designee
- The President of the Professional Fire Chiefs Association, or his designee
- The President of the New Jersey State Firemen's Association, or his designee
- The President of the League of Municipalities, or his designee

3. The Chairperson of the Task Force shall be the Director of the Division of Fire Safety.

4. The purpose of the Task Force will be to examine how fire departments can foster greater cooperation and improve interdepartmental communication with the state, county and federal agencies in order to respond to a major disaster, to examine the current delivery of fire protection and the operational readiness of New Jersey's Fire Service, and to develop and recommend a Statewide plan to affect a more efficient, more economical, and safety sensitive operation.

5. Specifically, the Task Force will study the following aspects of fire department performance:

- Interdepartmental communication
- Major emergency response
- Training

6. The Task Force will consider making recommendations with regard to potential remedies, including:

- Interdepartmental training exercises to prepare for major emergency response
- Group purchasing
- Methods and technology to improve interdepartmental communication
- Departmental efficiency studies

7. The Task Force may request assistance from any department, division, office or agency of the State. Any department, division, office or agency of the State is hereby required to cooperate with the Council and furnish it with information and personnel assistance to the extent necessary to achieve the goals of this Order.

Dated March 31, 2003.

EXECUTIVE ORDER NO. 54

WHEREAS, The President of the United States has authorized the Secretary of Defense to call up select members of the Reserve and National Guard to active duty in response to the continuing Global War on Terrorism, potential armed conflict with Iraq, and heightened tensions with North Korea; and

WHEREAS, The President of the United States has also authorized the Secretary of Homeland Security to similarly call up members of the Coast Guard Reserve; and

WHEREAS, New Jersey residents are among the Reserve and National Guard members who have been mobilized into active duty with the United States Armed Forces; and

WHEREAS, Reserve and National Guard members who are activated during this crisis are serving vital national and State interests for which they deserve the full support of the citizens of this State; and

WHEREAS, Many of the State's resident mobilized Reserve and National Guard members and their families will suffer short and long-term emotional, financial and physical hardships due to their service during Operation Iraqi Freedom; and

WHEREAS, It is fitting and proper that the State recognize the sacrifices made by its residents in the Reserve and National Guard and the debt owed to them and their families;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. I will seek through legislation the provision of health benefits coverage for immediate family members of National Guard personnel called to State active duty that exceeds 30 days, in situations where Guard personnel lose their employment-related health benefits or where such personnel did not have employer-related health benefit coverage.

2. I will also seek legislation that will increase the pay of Guard members called to State active duty so that their salary approximates the federalized Guard pay.

3. I will urge the federal government to exempt from federal taxes housing and subsistence allowances for National Guard members called to State active duty, and I will pursue legislation that will exempt such allowances from New Jersey State taxes.

4. The Director of the Division of Motor Vehicles, in consultation with the Commissioner of Transportation, is hereby directed to timely extend the renewal date of drivers' licenses, vehicle registration and motor vehicle inspections for active duty military service personnel during their active service in the war on terrorism and Operation Iraqi Freedom.

5. New Jersey Transit Corporation is hereby directed to afford to all military personnel the Senior Citizen half-price discount on its trains and buses.

6. The New Jersey Higher Education Student Assistance Authority (HESAA) is directed to coordinate the creation of a scholarship fund for students who are New Jersey residents, who demonstrate that their parent, spouse or another person on whom they relied for significant financial assistance or contribution to meet their daily needs (hereinafter, dependent student), was killed or severely disabled in the War on Terrorism or in the war with Iraq. HESAA is authorized to solicit and accept contributions to the scholarship fund.

7. All State Colleges and Universities subject to N.J.S.A.18A:64-1 et seq. and the New Jersey Institute of Technology shall hereby forego and desist collecting tuition and fees charged for the Fall 2003 semester and subsequent semesters from dependent students as defined in paragraph 6 of this Order.

8. Any junior or county college or independent four-year college or university that voluntarily foregoes or delays collection of tuition and fees for the Fall 2003 semester and subsequent semesters from dependent students may submit to HESAA an application for reimbursement up to the amount currently charged for tuition and fees by any State college or university for a full-time student who is a New Jersey resident, or for actual tuition and fees charged, whichever is the lesser amount.

9. All State Colleges and Universities subject to N.J.S.A.18A:64-1 et seq., and the New Jersey Institute of Technology, may submit to the HESAA an application for reimbursement for tuition and fees incurred by any dependent student for the Fall 2003 semester and subsequent semesters.

10. HESAA shall work with the New Jersey Commission on Higher Education to develop a process to review such applications for reimbursement that are submitted by colleges and universities pursuant to this Order.

11. To ensure that members of the National Guard and Reserves are not precluded from applying or renewing applications for grant and scholarship programs administered by the HESAA, the Authority is directed to extend both the June 1 application deadline for previous Tuition Aid Grant recipients and the October 1 application deadline for first-time filers, for members of the National Guard and Reserves until 45 days after their return from active military service.

12. To facilitate the communication between activated troops and family members, the New Jersey public colleges and universities are urged to provide free Internet access and establish e-mail accounts at their institutions for family members to use to communicate with those loved ones.

13. Legislation will be pursued that provides for National Guard and Reserves members, who are called to active military service and therefore unable to complete a course of study at the New Jersey institution of higher education, to receive tuition refund or re-enrollment rights, upon their completion of military service. This will afford some measure of protection to those called for duty and enable them to continue their pursuit of a post-secondary education when they return to civilian life.

14. The Attorney General shall strictly enforce all laws to protect military personnel against discrimination related to housing, employment, education, public accommodations, and credit applications due to active duty service. The Attorney General, in coordination with the Adjutant General, will establish a telephone "hot line" to receive complaints of discrimination to ensure prompt investigation.

15. The Department of Banking and Insurance is directed to promulgate emergency regulations that will:

a) prohibit cancellations of professional liability insurance policies while the policyholder is on active duty;

b) suspend the policyholder's obligation to pay premiums during the term of his or her period of active duty; and

c) require renewal without lapse of policies that expire during active duty, if application to renew is made within 60 days of return from active duty.

16. I will propose legislation to permit military personnel called to active duty service in the war on terrorism or the war with Iraq to terminate a car lease without penalty.

17. The Department of Labor is hereby directed to work closely with its one-stop career centers across the State to insure that returning members of the National Guard are given immediate and thorough attention to their employment needs, and that such returning members shall have access to counselors whose specific duties include conducting seminars for employers and job search workshops for returning Guard members.

18. The New Jersey Department of Military and Veterans' Affairs is charged with the responsibility for the coordination of the provision of such entitlements and services offered by the State in support of its Mobilized Residents and their families.

19. Any New Jersey resident mobilized into Active Duty with the Armed Forces or Coast Guard of the United States by order of the President for Operation Iraqi Freedom will be considered eligible for those Veterans' Entitlements for which they are in all other aspects qualified.

20. All New Jersey Veterans' organizations and employers are encouraged to cooperate with the Department of Military and Veterans' Affairs and with their local communities to ensure that the State's active service members receive the support that they and their families deserve.

21. This Order shall take effect immediately.

Dated April 1, 2003.

EXECUTIVE ORDER NO. 55

WHEREAS, Corporal Michael E. Curtin, a lifelong resident of the State of New Jersey, graduated from Howell High School in 1998, where he played three years of varsity football; and

WHEREAS, Corporal Curtin enlisted in the United States Army in May, 2001, completed basic training at Fort Benning, Georgia and subsequently completed the Army's paratrooper training school; and

WHEREAS, Corporal Curtin served proudly as a member of the U.S. Army's elite 3rd Infantry Division based at Fort Stewart in Georgia, and was deployed to Kuwait in the service of his country in January 2003; and

WHEREAS, Corporal Curtin was a kind and courageous young man, known for his tremendous bravery, unwavering faith and a devout love for his family; and

WHEREAS, Corporal Curtin has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Corporal Curtin's patriotism and dedicated service to his country makes him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, April 11, 2003, in recognition and mourning of Corporal Michael E. Curtin.

2. This Order shall take effect immediately.

Dated April 10, 2003.

EXECUTIVE ORDER NO. 56

WHEREAS, Current economic conditions pose new challenges and provide new opportunities to New Jersey's economy; and

WHEREAS, New Jersey must meet these challenges and opportunities by supporting the creation of high-quality jobs, particularly in fields related to research and development; and

WHEREAS, New Jersey has a world-class industrial base and academic research universities available to support new businesses in technology; and

WHEREAS, Relationships between industrial and academic research in the State must be strengthened to sustain New Jersey's economy; and

WHEREAS, Creating a platform for academic and research excellence at New Jersey's public universities in conjunction with the State's strong industrial research sector will attract and enhance Federal and private sector funding; and

WHEREAS, A comprehensive analysis of the available resources, coupled with the development of a Statewide business plan, will strengthen New Jersey's economy by promoting the resources upon which future businesses will grow; and

WHEREAS, Providing a strong foundation and mechanism for establishing new companies and strengthening the support structure for existing ones will stabilize New Jersey's economy through future technological changes;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Commission on Jobs, Growth and Economic Development, hereinafter referred to as the Commission.

2. The Commission shall consist of up to 45 members appointed by the Governor, including the Chief Executive Officer of the Commerce and Economic Growth Commission and the Commissioner of Labor. The members of the Commission shall be selected from among representatives of business and industry, the research and high-technology sectors, higher education, the financial industry sector; and persons familiar with these institutions as they relate directly to State Government. The Governor shall appoint the Co-Chairs of the Commission.

3. It shall be the charge and duty of the Commission to accomplish the following:

a. Develop a blueprint for New Jersey's economic growth, including the identification of opportunities for creating jobs for New Jersey's citizens, particularly in the area of research and development, in order to develop the high-technology sector and well-paid knowledge-based jobs for New Jerseyans.

b. Identify emerging technologies of strategic importance to New Jersey and resources to support these emerging technologies in collaboration with and for the benefit of both New Jersey's industrial and academic sectors in order to maximize the investment of research dollars in the State.

c. Identify workforce training needs of New Jersey's high-technology and industrial sector and develop strategies to foster and encourage better coordination and training strategies to meet the needs of industry and of New Jerseyans.

4. The Commission shall report directly to the Governor, outlining specific recommendations that address the charge and duty stated above with respect to a plan for strengthening the economy and the creation of high-quality jobs for the State of New Jersey.

5. The Commission is authorized to call upon any department, office or agency of State Government and any public institution of higher education to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, office, division and agency of this State and public institution of higher education is hereby required to cooperate with the Commission and to furnish it with such information, personnel and assistance as is necessary to accomplish the purposes of this Order.

6. Members of the Commission shall serve without compensation, except that they may receive per diem and travel expenses.

7. This Order shall take effect immediately.

Dated April 15, 2003.

EXECUTIVE ORDER NO. 57

WHEREAS, Staff Sergeant Terry Hemingway, a longtime resident of the State of New Jersey, graduated from Trenton High School; and

WHEREAS, Staff Sergeant Hemingway subsequently enlisted in the United States Army, where he had a distinguished military career for more than nineteen years; and

WHEREAS, Staff Sergeant Hemingway served proudly as a member of the U.S. Army's 15th Infantry Regiment, Company C and was deployed to Iraq in the service of his country; and

WHEREAS, Staff Sergeant Hemingway was a courageous soldier, a loving husband and brother and a devoted father of three children; and

WHEREAS, Staff Sergeant Hemingway has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Staff Sergeant Hemingway's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours on Monday, April 21, 2003, in recognition and mourning of Staff Sergeant Terry Hemingway.
2. This Order shall take effect immediately.

Dated April 21, 2003.

EXECUTIVE ORDER NO. 58

WHEREAS, Police Officer Mary Ann Collura, a life-long resident of Fair Lawn, joined the Fair Lawn Police Department in January 1985; and

WHEREAS, Officer Collura served the Police Department and the people of Fair Lawn with exceptional courage and professionalism, genuine courtesy and abiding commitment to the finest law enforcement traditions; and

WHEREAS, Officer Collura proudly served the public as a police officer for eighteen years, a certified law enforcement training commission instructor, a member of the Bergen County Rapid Deployment Force, and was the first female officer appointed to the Department; and

WHEREAS, Officer Collura has made the ultimate sacrifice, giving her life in the line of duty to protect New Jersey's citizens; and

WHEREAS, Officer Collura's bravery and dedicated service make her a hero and a true role model for all Americans; and, therefore, it is appropriate and fitting for the State of New Jersey to mark her passing and to honor her memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, April 23, 2003 in recognition and mourning of Fair Lawn Police Officer Mary Ann Collura.

2. This Order shall take effect immediately.

Dated April 23, 2003.

EXECUTIVE ORDER NO. 59

WHEREAS, Recent events have demonstrated that the siting and construction of billboards involves interaction with governmental agencies at several levels, and has the potential to confer substantial monetary benefits on owners and developers of billboards; and

WHEREAS, These events have raised questions as to the adequacy of the existing policies and practices of State departments, authorities and independent agencies in approving the siting, construction and leasing of billboards on public property; and

WHEREAS, It is essential that the existing processes for locating and constructing billboards on State property be thoroughly reviewed with an eye towards furthering public notice and input in the siting process and financial disclosure of the individuals and entities with an interest in billboard projects, and reducing or eliminating new billboard construction in New Jersey; and

WHEREAS, There is a compelling need to suspend the siting and construction of new billboards on State property until this comprehensive review is completed, in order to protect the public interest in the integrity in the award of public contracts for billboards, to ensure that any such contracts are reviewed in compliance with environmental requirements and benefits and to enhance the financial benefit to the State for any such contracts;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Effective immediately, there is imposed a 120-day moratorium on the approval of any permit application or contract for the design, construction or erection of any billboards on State-owned property or property owned by any State department, agency or independent authority.

2. Effective immediately, there is imposed a 120-day moratorium on the sale or lease by any State department, agency or independent authority of any existing billboards owned, operated or controlled by the State of New Jersey, any State department, agency or independent authority.

3. There is hereby created the Billboard Policy and Procedure Review Task Force (hereinafter "Task Force"). The Task Force shall consist of the Commissioner of Transportation, the Commissioner of Community Affairs, the Commissioner of Environmental Protection, the Chief of the Governor's Authorities Unit and five public members to be appointed by the Governor. The five public members shall have experience in land use issues, ethics law, environmental matters or public contracting and procurement procedures. The Governor shall appoint the Chair of the Task Force from among its members.

4. The Task Force shall undertake a comprehensive review of the existing procedures involved in the siting of billboards on public and private property, and the degree of involvement that State and local government agencies have in the siting and approval process. The Task Force shall also determine and catalog the existing policies and practices in place for all State departments, agencies and independent authorities regarding the sale, lease, development and erection of billboards in the State of New Jersey. The Task Force shall also evaluate the feasibility of reducing or eliminating new billboard construction in New Jersey.

5. The Task Force shall report its findings within 90 days of the effective date of this Order. The report of the Task Force shall detail the existing policies and practices in place, and shall contain detailed recommendations concerning how the process and procedures should be altered in order to ensure the integrity of the siting decisions and associated contracts. The goal of the Task Force shall be to recommend uniform policies and procedures to be put in place for the sale, lease or construction of any billboards in the State of New Jersey.

6. Specifically, these uniform policies and procedures shall include notice to local public entities for comment prior to the construction of new billboards, full financial disclosure of all persons or entities with any financial interest in the billboards, and the elimination of no-bid contracts.

7. The uniform policies and procedures should also require that notice and opportunity to comment at a public hearing be provided prior to the issuance of any permit for a billboard.

8. The Task Force shall also examine the present organizational structure that the State utilizes in regulating and approving the placement of billboards in New Jersey, and shall recommend whether the existing structure should be altered in order to better accomplish the goals of mitigating the impact of billboards on the environment and of fostering interaction with local zoning and planning agencies.

9. The Attorney General shall provide legal counsel to the Task Force. The Task Force may request assistance from any department, division, office, agency or authority of the State. Any department, division, office,

agency or authority of the State is hereby directed to cooperate with the Task Force and furnish it with information and personnel assistance to the extent necessary to achieve the goals of this Order.

10. This Order shall take effect immediately.

Dated May 12, 2003.

EXECUTIVE ORDER NO. 60

WHEREAS, Children are our society's most precious resource and must be valued as our greatest blessing; and

WHEREAS, The protection of children and the strengthening of families is an essential commitment of this Administration; and

WHEREAS, The protection of children and the delivery of critical services to children in need requires the attention and concerted focus of the highest levels of government; and

WHEREAS, The establishment of a Governor's Cabinet for Children will coordinate and marshal the resources of State government and non-governmental agencies and programs and provide a critical mechanism to ensure the delivery of the highest level of services to children;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Governor's Cabinet for Children.
2. The Governor's Cabinet for Children shall consist of twenty (20) members, including the Commissioner of Human Services, the Commissioner

of the Department of Education, the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Community Affairs, the Attorney General, the Treasurer, the Public Defender, the Special Deputy Commissioner for Children's Services in the Department of Human Services, the Child Advocate and the Executive Director of the Juvenile Justice Commission. The Governor shall also appoint ten (10) public members with expertise and experience in the area of strengthening children and families. The Governor shall designate a chairperson and vice-chairperson from among the Children's Cabinet members.

3. The Governor's Cabinet for Children shall develop a strategic plan for strengthening children's and family services in New Jersey. The strategic plan shall identify policies and necessary mechanisms to coordinate the provision of services to children at risk of child abuse or neglect. The strategic plan shall specifically consider the roles of and the need for coordination among the full range of programs and services that address the needs of children, including child welfare agencies, the courts, law enforcement, schools, health programs, correctional agencies, local governments and community groups and organizations. The strategic plan shall constitute a comprehensive planning resource for all State and local agencies and programs, as well as non-governmental organizations.

4. The Governor's Cabinet for Children shall comprehensively examine on an ongoing basis the statutory mission of all State agencies with a focus on the protection of children and the strengthening of families and evaluate the delivery of services by these agencies.

5. The Governor's Cabinet for Children shall foster collaboration among all agencies of State government so that children are served by a system that achieves the highest standard of care and effectiveness, while comprehensively integrating and marshalling all available resources.

6. The Governor's Cabinet for Children shall annually make recommendations to the Governor and the Legislature for the provision of the highest level of services and programs to the children of this State.

7. The Governor's Cabinet for Children shall monitor and assist in the implementation of the Department of Human Services' Transformation Plan.

8. The Governor's Cabinet for Children is authorized to call upon any department, office, division or agency of State government and any public institution of higher education to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, office, division and agency of this State is hereby directed to cooperate with the Governor's Cabinet for Children and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order.

9. Members of the Governor's Cabinet for Children shall serve without compensation, except that they may receive per diem and travel expenses.

10. This Order shall take effect immediately.

Dated May 19, 2003.

EXECUTIVE ORDER NO. 61

WHEREAS, The State of New Jersey has a compelling interest in combating Human Immunodeficiency Virus ("HIV") and Acquired Immune Deficiency Syndrome ("AIDS") and related blood-borne pathogens; and

WHEREAS, New Jersey ranks fifth in the nation for the number of AIDS cases reported, has the highest proportion of women living with AIDS, and the third highest number of pediatric AIDS cases; and

WHEREAS, Younger men having sex with men and men having sex with men of color are at a particularly high risk for infection and minority men having sex with men now account for a majority of AIDS cases reported among men having sex with men; and

WHEREAS, African-Americans and Latinos are disproportionately impacted by the HIV/AIDS epidemic in this State; and

WHEREAS, Forty-six percent of all HIV cases in New Jersey are transmitted through injection drug use; and

WHEREAS, Young adults are the fastest growing group acquiring HIV and related blood-borne pathogens, statistically shown to have been acquired through injection drug use; and

WHEREAS, As of June 2002, the number of AIDS cases in the State totaled 43,051, indicating that the number of New Jersey residents living with AIDS has more than doubled in less than ten years;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 45 (Florio) creating the Governor's Advisory Council on AIDS and Executive Order No. 29 (Whitman) which continued the Governor's Advisory Council on AIDS are hereby rescinded and are superseded by this Executive Order.

2. There is hereby established the Governor's Advisory Council on HIV/AIDS and Related Blood-Borne Pathogens, herein referred to as "the Advisory Council."

3. The Advisory Council shall consist of the Commissioner of Health and Senior Services or his designee, the Commissioner of Corrections or his designee; the Commissioner of Human Services or his designee; the Commissioner of Banking and Insurance or his designee; the Attorney General or his designee; two members of the New Jersey Senate to be appointed by the Senate President; two members of the General Assembly to be appointed by the Speaker of the Assembly; and a minimum of twenty-five (25) public members appointed by the Governor. The public members shall include one physician practicing medicine in the public sector; one physician specializing in infectious diseases; one physician specializing in pediatric/adolescent HIV treatment; one nurse practicing in the public sector; one representative from the New Jersey Nurses Association or the Association of Nurses in AIDS Care; one representative of the New Jersey Women and AIDS Network or

a family planning program; one medical ethicist; one dentist; one pharmacist or representative of the New Jersey Pharmacists Association; four persons living with HIV; three representatives of AIDS services organizations; one attorney specializing in health care law; one representative of the New Jersey Lesbian and Gay Coalition; one representative from the Hispanic Director Association; one representative from the Black Ministers Council; one representative from the Hospital Association; one representative of the New Jersey Medical Society; one representative of a Drug Treatment Service Organization; four representatives from Title I and II Ryan White Service Areas, one representing the Grantee, City of Newark, one representing the Grantee, County of Hudson, and two representing other Title I or II areas from Planning Councils or Grantees. The public members shall serve at the pleasure of the Governor. All members shall serve without compensation.

4. The Governor shall select a Chairperson and Vice Chairperson from among the public members.

5. The charge of the Advisory Council shall be to:

a. Coordinate planning, policy development, data collection, resource allocation and Statewide service delivery activities as they relate to HIV/AIDS and other related blood-borne pathogens;

b. Recommend policy, legislation and other initiatives which will address the issues faced by the citizens of New Jersey living with HIV/AIDS and other related blood-borne pathogens; and

c. Educate the citizens of New Jersey as to the prevention and treatment of HIV/AIDS and other related blood-borne pathogens in attempt to decrease transmission of these diseases.

6. The Advisory Council shall meet no less than quarterly and report directly to the Governor, outlining its progress and advising the Governor of the Advisory Council's recommendations as they relate to the charge and duties set forth above. The Advisory Council shall issue a written report to the Governor within twenty-four months of its initial meeting.

7. The Advisory Council is authorized to call on any department, office, division or agency of this State to supply it with records and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency of this

State is hereby required, to the extent not inconsistent with law, to cooperate with The Advisory Council and to furnish it with such records, information, personnel and assistance as is necessary to accomplish the purposes of this Order.

8. This Order shall take effect immediately.

Dated May 27, 2003.

EXECUTIVE ORDER NO. 62

WHEREAS, The Cuban people have demonstrated a longing for freedom and democracy by expressing increasing and visible opposition to the communist regime in Cuba; and

WHEREAS, In light of this nation's commitment to the establishment of representative democracies and democratic institutions throughout the world, the Cuban-American community in New Jersey looks forward to the time when similar democratic reform may occur in Cuba; and

WHEREAS, The Cuban-American community in New Jersey awaits the day when the Cuban people are liberated from communist dictatorship, and the Cuban people are free to form a government that is democratic, respects human rights and provides due process of law to its citizens; and

WHEREAS, A liberated Cuba will enable the Cuban people to engage in economic, social, cultural and educational exchanges with the people of the United States, including the people of New Jersey; and

WHEREAS, A free and open exchange of ideas, people and goods will benefit the people of Cuba as well as the people of New Jersey; and

WHEREAS, New Jersey contains the second largest population of people of Cuban descent in the United States and should, therefore, study the immigration process and its possible impact on New Jersey and its population and develop appropriate procedures to respond to a potential influx of immigrants; and

WHEREAS, Executive Order Nos. 24 (Whitman) and 89 (Florio) directed the then-Department of Commerce and Economic Development to conduct a study to determine the likely social, economic and cultural consequences that would result from the liberation of the people of Cuba; and

WHEREAS, The liberation of the people of Cuba is becoming increasingly more imminent; and

WHEREAS, Executive Order Nos. 24 (Whitman) and 89 (Florio) should be reconstituted in recognition of the current situation in Cuba;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 24 (Whitman) is hereby superseded by this Order.
2. There is hereby established the Free Cuba Task Force ("Task Force"), within the Commerce and Economic Growth Commission.
3. The Task Force shall consist of nineteen members appointed by the Governor, including the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission. The Governor shall select the chair of the Task Force.
4. The Task Force shall conduct a study to determine the likely social, economic and cultural consequences that would result from the liberation of the people of Cuba. Specifically, the Task Force shall plan a strategy that will enable the State of New Jersey and the people of Cuba to take full

advantage of democratic reform in Cuba. The report shall delineate appropriate steps to be taken with respect to immigration issues which may impact on New Jersey as a result of these developments.

5. The Task Force shall coordinate its efforts with the Commerce and Economic Growth Commission and all State departments having relevant expertise or knowledge of such issues.

6. The Task Force may request assistance from any department, division, office or agency of the State. Any department, division, office or agency of the State is hereby required to cooperate with the Task Force and furnish it with information and personnel assistance to the extent necessary to achieve goals of this Order.

7. The Task Force shall report its findings within six months of the date of this Order and every six months thereafter.

8. This Order shall take effect immediately.

Dated June 18, 2003.

EXECUTIVE ORDER NO. 63

WHEREAS, Widespread power outages have occurred through out the United States and Canada including portions of the State of New Jersey;

WHEREAS, The power outages have caused rail, bus and other travelers to be stranded throughout the Northeastern United States and the State of New Jersey;

WHEREAS, The aforesaid circumstances constitute a disaster from a natural or unnatural cause which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities or counties of this State; and which is in some parts of the State and

may become in other parts of the State too large in scope to be handled by the normal municipal operating services;

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions N.J.S.A. App. A: 9-33 et seq. and N.J.S.A. 38A:3-6.1 and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do hereby order and direct:

1. In accordance with N.J.S.A.38A:2-4 and N.J.S.A. 38A:3-6.1, that the Adjutant General order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

2. The State Director of Emergency Management to implement the State Emergency Operations Plan and to direct the activation of county and municipal emergency operations plans as necessary.

3. In accordance with N.J.S.A. App.A:9-33 et seq. as supplemented and amended, that the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State Highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area, that, in the State Director's discretion, is deemed necessary for the protection of the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

4. In accordance with N.J.S.A. App. A:9-33 et seq. as supplemented and amended, that the Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Attorney General and Superintendent of State Police within their respective municipalities.

5. The State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

6. The State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from their residences during the course of this emergency.

7. That the executive head of any agency or instrumentality of the State government with authority to promulgate rules may, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management, waive, suspend or modify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

8. That in accordance with N.J.S.A. App. A:9-34, as supplemented and amended, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

9. In accordance with N.J.S.A. App. A:9-40, no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

10. That it shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this state of emergency.

11. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6 and 40A:14-156.4, that no municipality or public or semipublic agency send public works, fire, police, emergency medical or other personnel or equipment into any non-contiguous disaster-stricken municipality within this State nor to any disaster-stricken municipality outside this State unless and until such aid has been directed by the county emergency management coordinator or his deputies in consultation with the State Director of Emergency Management.

12. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated August 14, 2003.

EXECUTIVE ORDER NO. 64

WHEREAS, Executive Order No. 63 (2003), declaring a State of Emergency, was issued on August 14, 2003 because of widespread power outages; and

WHEREAS, The severity of the conditions necessitating the declaration of a State of Emergency has eased;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT that the State of Emergency declared in Executive Order No. 63 is terminated effective at 12 noon on August 15, 2003.

Dated August 15, 2003.

EXECUTIVE ORDER NO. 65

WHEREAS, Petty Officer First Class David M. Tapper, a lifelong resident of the State of New Jersey, graduated from Edgewood Regional High School in 1989; and

WHEREAS, Petty Officer First Class Tapper enlisted in the United States Navy upon graduation and subsequently completed the Navy's Basic Underwater Demolition/SEAL Training; and

WHEREAS, Petty Officer First Class Tapper served proudly as a U.S. Navy SEAL, where he had a distinguished military career for more than thirteen years and earned several honors including the Joint Service Commendation Medal, the Navy and Marine Corps Achievement Medal, and numerous Good Conduct Awards; and

WHEREAS, Petty Officer First Class Tapper was deployed to Afghanistan in the service of his country; and

WHEREAS, Petty Officer First Class Tapper was a courageous soldier, a loving husband and father of four children who was known for his tremendous bravery, unwavering faith and a devout love for his family; and

WHEREAS, Petty Officer First Class Tapper has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Petty Officer First Class Tapper's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, August 29, 2003, in recognition and mourning of Petty Officer First Class David M. Tapper.

2. This Order shall take effect immediately.

Dated August 27, 2003.

EXECUTIVE ORDER NO. 66

WHEREAS, Executive Order No. 59 (2003) established the Billboard Policy and Procedure Review Task Force (hereinafter "Task Force"); and

WHEREAS, The Task Force was directed (1) to undertake a comprehensive review of the existing procedures involved in the siting of billboards on public and private property, and the degree of involvement that State and local government agencies have in the siting and approval process, (2) to catalog the existing policies and practices in place for all State departments, agencies and independent authorities regarding the sale, lease, development and erection of billboards in the State, (3) to make recommendations concerning how the process and procedures should be altered in order to insure the integrity of the siting decisions and associated contracts; and (4) to evaluate the feasibility of reducing new billboard construction in New Jersey; and

WHEREAS, Executive Order No. 59 imposed a 120-day moratorium on the approval of any permit application, contract, sale or lease for billboards on State-owned property or property of any State department, agency or independent authority; and

WHEREAS, The Task Force has completed its mission in a timely and exemplary fashion, and has transmitted its report containing recommendations for legislative and policy changes designed to achieve the goals of Executive Order No. 59, namely that higher, uniform standards be followed by State agencies in dealing with the billboard industry, and that local communities must be provided the opportunity for meaningful input regarding all billboards sited in their municipalities; and

WHEREAS, It will take time to convert these recommendations into proposed legislation and to achieve their enactment; and

WHEREAS, There remains a compelling need to continue the suspension of the siting and construction of new billboards on State property until the new legislative framework is put in place;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The moratorium on the approval of any permit application or contract for the design, construction or erection of any new billboards on State-owned property or property owned by any State department, agency or independent authority established by Executive Order No. 59 is hereby continued until the current legislative session of the New Jersey Legislature is completed, so that the Legislature has an opportunity to enact appropriate legislation.

2. The New Jersey Department of Transportation and New Jersey Department of Environmental Protection are hereby directed to make recommendations on increasing the number of billboard-free roadways in scenic locations.

3. This Order shall take effect immediately.

Dated August 29, 2003.

EXECUTIVE ORDER NO. 67

WHEREAS, September 11, 2003 marks the second anniversary of the terrorist attacks on New York, Washington and Pennsylvania; and

WHEREAS, On this date, remembrance ceremonies and other memorial events, both public and private, will be taking place; and

WHEREAS, More than one quarter of the victims of the September 11, 2001 attacks were New Jerseyans, with nearly seven hundred of our residents killed in the attacks; and

WHEREAS, The lives of hundreds of New Jersey families have been drastically affected, through the loss of a parent, spouse, child or other loved one; and

WHEREAS, It is fitting that this day be observed with appropriate solemnity, in tribute to the thousands of innocent victims who perished in the attacks;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies, instrumentalities and all public buildings during appropriate hours on September 11, 2003 in recognition and mourning of all of those lost in the September 11th attacks, and particularly, those lost from our home State.

2. State employees who lost an immediate family member in the attacks on September 11, 2001 and who wish to take the day off from work on September 11, 2003 shall be granted a paid day off on that date, upon written notice to the agency or division at which they are employed.

3. Immediate family member for purposes of this Order means an employee's spouse, child, legal ward, foster child, grandchild, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law and other individuals who resided in the employee's household.

4. This Order shall take effect immediately.

Dated September 4, 2003.

EXECUTIVE ORDER NO. 68

WHEREAS, The National Weather Service has predicted Hurricane Isabel will make landfall on the eastern coast of the United States and will produce hurricane or tropical storm conditions in the State of New Jersey, including storm surge, heavy surf, rain, wind, flooding, power outages, downed trees, and is expected to affect traffic flow in areas of the State; and

WHEREAS, The aforesaid weather conditions constitute an imminent hazard which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities or counties of this State; and which is in some parts of the State and may become in other parts of the State too large in scope to be handled by the normal municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A.App.A:9-33 et seq. and N.J.S.A.38A:3-6.1 and N.J.S.A.38A:2-4 and all amendments and sup-

plements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a State of Emergency presently exists in the State of New Jersey and do hereby ORDER and DIRECT:

1. In accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, that the Adjutant General order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

2. The State Director of Emergency Management to implement the State Emergency Operations Plan and to direct the activation of county and municipal emergency operations plans as necessary.

3. In accordance with N.J.S.A. App.A:9-33 et seq. as supplemented and amended, that the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State Highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area, that, in the State Director's discretion, is deemed necessary for the protection of the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

4. In accordance with N.J.S.A. App.A:9-33 et seq. as supplemented and amended, that the Attorney General, pursuant to the provisions of N.J.S.A.39:4-213, acting through the Superintendent of the Division of State Police, determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or

gress from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Attorney General and Superintendent of State Police within their respective municipalities.

5. The State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

6. The State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from their residences during the course of this emergency.

7. That the executive head of any agency or instrumentality of the State government with authority to promulgate rules may, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management, waive, suspend or modify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A.App.A:9-45.

8. That in accordance with N.J.S.A.App.A:9-34 and N.J.S.A.App.A:9-51, as supplemented and amended, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

9. In accordance with N.J.S.A.App.A:9-40, no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

10. That it shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this state of emergency.

11. In accordance with N.J.S.A.App.A:9-34, N.J.S.A.App.A:9-40.6 and N.J.S.A.40A:14-156.4, that no municipality or public or semipublic agency send public works, fire, police, emergency medical or other personnel or equipment into any non-contiguous disaster-stricken municipality within this State nor to any disaster-stricken municipality outside this State unless and until such aid has been directed by the county emergency management coordinator or his deputies in consultation with the State Director of Emergency Management.

12. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated September 18, 2003.

EXECUTIVE ORDER NO. 69

WHEREAS, Executive Order No. 68 (2003), declaring a State of Emergency, was issued on September 18, 2003, because of severe weather conditions expected to be caused by Hurricane Isabel; and

WHEREAS, The severity of the conditions necessitating the declaration of a State of Emergency has eased;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State of Emergency declared in Executive Order No. 68 is terminated effective at 6:00 PM on September 19, 2003, in every county in the State except for Atlantic County.

2. The State of Emergency declared in Executive Order No. 68 is terminated effective at 12:00 noon on September 20, 2003 in Atlantic County.

Dated September 19, 2003.

EXECUTIVE ORDER NO. 70

WHEREAS, The Highlands region is an area that extends from northwestern Connecticut across the lower Hudson River Valley and northern New Jersey into east central Pennsylvania and the New Jersey portion of the Highlands region is greater than 1,000 square miles, covering portions of 7 counties and 90 municipalities; and

WHEREAS, The Highlands region is designated as a Special Resource Area by the State Development and Redevelopment Plan (2001); and

WHEREAS, The Highlands region is an essential source of drinking water, providing clean and plentiful drinking water for one-half of the State's population, including communities beyond the Highlands region, from only 13 percent of the State's land area; and

WHEREAS, The Highlands region contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds and plant and wildlife species habitats, contains sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and

WHEREAS, The approximately 110,000 acres of agricultural lands in active production in the Highlands region of New Jersey are important resources of the State that should be preserved; and

WHEREAS, The Highlands region provides a desirable quality of life where people live and work; and

WHEREAS, It is important to ensure the economic viability of communities throughout the Highlands region; and

WHEREAS, Since 1984, 65,000 acres - over 100 square miles - of the Highlands region have been lost to development, and sprawl and the pace of development in the region has dramatically increased with the rate of loss of forested lands and wetlands more than doubling since 1995; and

WHEREAS, The leadership of the New Jersey Congressional delegation to protect the Highlands region through the introduction of the Highlands Stewardship Act is to be commended; and

WHEREAS, Members of the public and local officials have been actively seeking the preservation of the Highlands region for decades, including the recent work of the "Five County Coalition;" and

WHEREAS, Maintaining the quality of life and preserving the natural resources of the Highlands region while providing for smart growth opportunities can be best accomplished through the development of a plan to encourage acquisition, regulation and regional planning;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER AND DIRECT:

1. There is hereby established the Highlands Task Force (hereinafter the "Task Force").

2. The Task Force shall consist of:
 - The Commissioner of the Department of Environmental Protection;
 - The Commissioner of the Department of Community Affairs;
 - The Secretary of the Department of Agriculture;
 - The Commissioner of the Department of Transportation; and
 - The Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission.

Additional members of the Task Force shall be appointed by the Governor as follows:

- 6 representatives of local officials;
- 4 representatives of statewide or regional environmental organizations;
- 2 representatives of the development/business community;
- 1 representative of the farming community; and
- 1 member of the general public.

3. The Co-Chairpersons of the Task Force shall be the Commissioners of the Department of Environmental Protection and the Department of Community Affairs.

4. The purpose of the Task Force shall be to make recommendations intended to preserve the natural resources of and enhance the quality of life in the Highlands region, including an examination of legislation, regulations, model local ordinances or other government action necessary to address, at a minimum, the following topics:

- Protection of water quality, drinking water supplies, wetlands, critical plant and wildlife species habitat, vegetated stream corridors, and contiguous forests;
- Identification of methods to protect and preserve open space and natural resources of the Highlands region;
- Identification of methods to enhance farmland preservation and support the agriculture industry in the Highlands region;
- Identification of methods to promote historic, cultural, scenic and recreational resource opportunities that preserve the natural features of the Highlands region; and

- Provision of smart growth opportunities, including economic development and redevelopment, in the Highlands region through regional planning, including coordination of transportation and infrastructure investments and administrative agency activities, consistent with State Development and Redevelopment Plan (2001).
5. The Task Force shall schedule public hearings to solicit input from the public and interested parties, including the "Five County Coalition."
 6. The Task Force shall submit a final report containing its findings and recommendations, including an implementation plan, to the Governor within 180 days of this Executive Order.
 7. The Task Force is authorized to call upon any department, office, division or agency of this State to supply it with records and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Task Force and to furnish it with such records, information, personnel and assistance as is necessary to accomplish the purposes of this Order.
 8. This Order shall take effect immediately.

Dated September 19, 2003.

EXECUTIVE ORDER NO. 71

WHEREAS, N.J.S.A.52:32-17 et seq., formally known as the Set-Aside Act for Small Businesses, Female Businesses, and Minority Business (Set-Aside Act), was impacted by the Consent Decree in GEOD v. State of New Jersey, et al., which, in part, permanently enjoins the State from setting aside contracts for bidding by only minority and women owned firms; and

WHEREAS, The Set-Aside Act recognizes the importance of small businesses to the economic health and well being of the State; and

WHEREAS, The State of New Jersey recognizes that small businesses provide it with a strong economic backbone and are vital in order for its economy to thrive; and

WHEREAS, new regulations were promulgated to conform the Set-Aside Act with the Consent Decree, and the new rules create bidding set-asides for small businesses only; and

WHEREAS, It is reasonable to anticipate that under the new regulations the number of small businesses eligible under the Set-Aside Act will increase because many of the firms formerly certified as minority and women owned businesses qualify and may now register as small businesses; and

WHEREAS, The Set-Aside Act directs that a fair proportion, but not less than 15%, of the State's total purchases and contracts for construction, property and services be placed with small businesses; and

WHEREAS, The increase in the number of small businesses eligible to participate in the small business set aside program warrants an increase in the percentage of contracts awarded to small businesses above the minimum level established in the Set-Aside Act to ensure that a fair proportion of the State's total purchases and contracts for construction, property and services is placed with small businesses;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State do hereby ORDER and DIRECT:

1. Contracting agencies shall increase the percentage of State contracting dollars that shall be set-aside for small businesses, pursuant to N.J.S.A. 52:32-17 et seq., from the minimum percentage of 15% set by law up to 25% to ensure that a fair proportion of the State's total purchases and contracts for construction, property and services is placed with small business

concerns. Contracting agencies shall consult with the Commerce and Economic Growth Commission and the Department of the Treasury, as appropriate, regarding the allocation of the increased percentage among the categories of small businesses set by regulation.

2. Contracts awarded by contracting agencies under the Set-Aside Act shall comply with the statutory and regulatory requirements for the award of contracts to small businesses.

3. This Order shall take effect immediately.

Dated October 2, 2003.

EXECUTIVE ORDER NO. 72

WHEREAS, Second Lieutenant Richard Torres, a lifelong resident of the State of New Jersey, graduated from Passaic High School; and

WHEREAS, Lieutenant Torres enlisted in the United States Army after high school and subsequently joined the ROTC Program at Austin Peay State University, where he graduated with honors in May 2002; and

WHEREAS, Lieutenant Torres served proudly as a member of the U.S. Army's 1st Battalion, 32nd Infantry Regiment, 10th Mountain Division and was deployed to Iraq in the service of his country; and

WHEREAS, Lieutenant Torres was a courageous soldier, a dedicated officer, and a loving husband, son and brother; and

WHEREAS, Lieutenant Torres has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Lieutenant Torres' patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, October 15, 2003, in recognition and mourning of Second Lieutenant Richard Torres.

2. This Order shall take effect immediately.

Dated October 14, 2003.

EXECUTIVE ORDER NO. 73

WHEREAS, Army Specialist Simeon Hunte, a lifelong resident of the State of New Jersey, graduated from Arts High School in Newark, and attended Montclair State University; and

WHEREAS, Specialist Hunte subsequently enlisted in the United States Army in 2001, with a plan to finance his dream of becoming a doctor; and

WHEREAS, Specialist Hunte served proudly as a member of the U.S. Army's 1st Armored Division, and was deployed to Iraq in the service of his country; and

WHEREAS, Specialist Hunte was a courageous soldier, a loving husband and a devoted father of two children; and

WHEREAS, Specialist Hunte has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Specialist Hunte's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, October 17, 2003, in recognition and mourning of Army Specialist Simeon Hunte.

2. This Order shall take effect immediately.

Dated October 16, 2003.

EXECUTIVE ORDER NO. 74

WHEREAS, John J. Fay, Jr. served honorably and with distinction during World War II onboard the U.S.S. Thorn, the U.S.S. Snap and with the U.S. Navy Underwater Demolition Team; and

WHEREAS, After his Naval Service, Jack Fay returned to civilian life to pursue a lifetime of distinguished public service in New Jersey; and

WHEREAS, For more than two decades, Jack Fay inspired high school students by teaching and instilling in them an appreciation for history, economics and public service; and

WHEREAS, Through his career, Jack has been a teacher and mentor to numerous young leaders of our State; and

WHEREAS, In every elected office he has held - as a Councilman in Woodbridge, as a Middlesex County Freeholder, as a member of the State Assembly and as a State Senator - Jack Fay has been a clarion voice rallying support and protection for people in need; and

WHEREAS, Jack Fay has provided visionary leadership as the Executive Director of the New Jersey Commission on Cancer Research and as a volunteer for the Center of Hope and Emmaus House; and

WHEREAS, For over four decades, Jack Fay's articulate advocacy for the rights of the elderly and veterans has been legendary; and

WHEREAS, In the 1970's and 1980's, Jack's leadership as Vice Chair of the Health and Institutions Committee helped to organize the first hearings at the State's psychiatric institutions; and

WHEREAS, Jack Fay was instrumental in securing the passage of legislation to protect the frail elderly in nursing homes, residential health care facilities, and boarding homes, and as a State Senator, was a leader in the movement for New Jersey to adopt the Bill of Rights for nursing home residents that gave residents a legal right of action for violation of any of their enumerated rights; and

WHEREAS, Jack Fay drafted and sponsored the legislation that created the Office of the Ombudsman for the Institutionalized Elderly - the strongest Ombudsman legislation in the nation; and

WHEREAS, In 1978, Governor Brendan T. Byrne appointed Jack Fay as the first Ombudsman for the Institutionalized Elderly, where he served

with extraordinary effectiveness to ensure the adequacy of care and the quality of life for our institutionalized elderly until 1985; and

WHEREAS, In 2002, the Community Health Law Project, a Statewide legal aid society dedicated to people with disabilities, presented Jack the Ann Klein Advocate Award for his many years of service fighting for the rights of nursing home residents; and

WHEREAS, Jack Fay's lifetime of selfless and distinguished service to New Jersey citizens warrants permanent recognition and appreciation; and

WHEREAS, The East Hall at Senator Garrett W. Hagedorn Psychiatric Hospital in Glen Gardner, Hunterdon County, is a stand-alone building housing a 100-bed unit serving geriatric/psychiatric residents, the very citizens Jack Fay worked so hard to protect and support;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The East Hall at Senator Garrett W. Hagedorn Hospital is hereby renamed the "Senator John J. Fay, Jr. Hall."
2. This Order shall take effect immediately.

Issued October 18, 2003.

EXECUTIVE ORDER NO. 75

WHEREAS, The education of the State's children is critically important to the State's economy and future prosperity; and

WHEREAS, Despite a record budget deficit over the past 20 months, the State has provided an increase of \$277 million in education aid in the FY04 budget; and

WHEREAS, In times of fiscal crisis, it is imperative that the State invest its resources in programs that maximize educational achievement such as early literacy, high quality teaching, and modern school facilities; and

WHEREAS, The State has undertaken an \$8.6 billion school construction program that provides direct property relief to communities throughout the State; and

WHEREAS, It is important for the State and school districts to scrutinize spending and determine where savings can be achieved in order to preserve educational programs and to use State and local resources as wisely and efficiently as possible; and

WHEREAS, Several educational advocacy organizations, most notably led by the Garden State Coalition of Schools, have sought legislation to establish a commission that would study the effect of State mandates on school districts and where cost savings might be realized through flexibility or elimination of unnecessary or non-productive mandates; and

WHEREAS, The State should review education mandates to identify those that are unnecessary, duplicative, and/or those that impose additional cost burdens to school districts without providing real benefits so that education funds can be spent on programs that are most effective; and

WHEREAS, Legislation to establish an Education Mandate Review Study Commission was passed by the New Jersey State Senate on June 23, 2003, but did not come before the Assembly prior to adjournment in early July 2003; and

WHEREAS, It is important to study and review mandates at this time so that the State and local communities can work expeditiously to implement recommendations; and

WHEREAS, the State has a compelling interest to consider how mandates can be eliminated or altered so as to provide flexibility that will allow school districts to realize cost savings and improve educational services;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established in the Department of Education the Education Mandate Review Study Commission.
2. The Commission shall consist of the Commissioner of Education, or his designee, and twelve public members appointed by the Governor. The Governor shall appoint the chair of the Commission.
3. The Commission shall identify and evaluate State statutory and regulatory requirements imposed upon school districts and make recommendations regarding those mandates that may be altered or eliminated to provide cost flexibility or cost savings to school districts.
4. The Commission shall hold public hearings in furtherance of its purpose to allow input from stakeholders.
5. The Commission is authorized to call upon any department, office, division or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, office, division and agency of this State is required to cooperate with the Commission and to furnish it with such information and assistance as is necessary to accomplish the purposes of this Order.
6. The Commission shall issue a report to the Governor no later than January 31, 2004.
7. Public members of the Commission shall serve without compensation.

8. This Order shall take effect immediately.

Issued October 22, 2003.

EXECUTIVE ORDER NO. 76

WHEREAS, Executive Order No. 40 (2002) established the Advisory Council Against Sexual Violence ("Council"), consisting of 25 members appointed by the Governor, including 10 State officials and 15 public members with specialized expertise; and

WHEREAS, Reaction to the Council has been extremely positive and numerous people have expressed interest in serving as public members of the Council; and

WHEREAS, The call for broader public participation on the Council should be accommodated;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Council's membership shall be expanded to 29 members by adding 4 additional public members appointed by the Governor.
2. Except as herein modified, all of the provisions of Executive Order No. 40 (2002) shall remain in full force and effect.
3. This Order shall take effect immediately.

Issued October 23, 2003.

EXECUTIVE ORDER NO. 77

WHEREAS, All public officials must adhere to the highest ethical standards; and

WHEREAS, A question was raised recently concerning whether the Governor's Office Code of Conduct applied to the Governor; and

WHEREAS, In light of that apparent uncertainty, I directed Counsel's Office to revise the Code of Conduct to apply it explicitly to the Governor; and

WHEREAS, In connection with that effort, this Office convened a distinguished bi-partisan Advisory Panel:

- John J. Degnan, former Chief Counsel to Governor Byrne and former Attorney General;
- Stewart G. Pollock, former Chief Counsel to Governor Byrne and retired Supreme Court Justice;
- W. Cary Edwards, former Chief Counsel to Governor Kean and former Attorney General;
- Michael R. Cole, former Chief Counsel to Governor Kean and former First Assistant Attorney General; and
- John J. Farmer, Jr., former Chief Counsel to Governor Whitman and former Attorney General

to provide guidance as to the most appropriate means of establishing an ethics Code of Conduct for the Governor; and

WHEREAS, The Advisory Panel unanimously recommended that a Code of Conduct be drafted specifically for the Governor; and

WHEREAS, The Advisory Panel has issued a Report explaining the basis for its recommendations; and

WHEREAS, The Advisory Panel has drafted a recommended Code of Conduct applicable to the position of Governor; and

WHEREAS, I have reviewed the Report from the Advisory Panel and the proposed Code of Conduct and have determined to adopt it with certain additional strictures;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Report of the Advisory Panel is hereby accepted.
2. The Code of Conduct for the Governor recommended by the Advisory Panel is hereby adopted and shall be applied to the position of Governor.
3. There is hereby created an Advisory Ethics Panel composed of two public members appointed by the Governor, in consultation with the Chair of the Executive Commission on Ethical Standards. In order to be appointed as a public member, an individual shall have served as either Chief Counsel to the Governor, as Attorney General, or as a Justice of the Supreme Court or a Judge of the Superior Court. The two public members shall be appointed for a term of three years, and shall hold office until their successors are appointed and have qualified. No more than one of the members shall be from the same political party as the Governor.
4. The Advisory Ethics Panel shall be available to advise the Governor regarding conflicts issues and application of the Governor's Code of Conduct.
5. The Governor's Chief Counsel or Ethics Liaison Officer shall seek the advice of the Advisory Ethics Panel when he has questions concerning the propriety of the Governor's conduct under the Code. When requested by the Chief Counsel or Ethics Liaison Officer, the Advisory Ethics Panel shall issue a written determination, which shall be made publicly available.

6. The Governor shall abide by the judgment of the Advisory Ethics Panel as to the propriety of his actions. In the event the Panel members cannot agree on the proper resolution of a particular issue presented to it, the Governor shall not engage in the proposed activity.

7. If a question is raised with regard to the propriety of the conduct of the Governor, and the Advisory Ethics Panel was not consulted by the Chief Counsel or the Ethics Liaison Officer prior to the Governor engaging in such conduct, the Panel shall have the discretion to review the question and to issue a public determination. In such circumstances, if the Panel finds that the Governor's actions were in violation of the Code of Conduct for the Governor, the Panel shall have the power to impose monetary penalties.

8. This Order shall take effect immediately.

Issued October 24, 2003.

EXECUTIVE ORDER NO. 78

WHEREAS, New Jersey has a diverse and active air transportation system, consisting of 3 commercial air carrier airports, 45 public use general aviation airports, 77 special and restricted use airports and 361 heliports; and

WHEREAS, The public use general aviation airports are a critical part of New Jersey's multimodal transportation and economic infrastructure, serving corporate, business, recreational and flight training activity; and

WHEREAS, New Jersey is home to over 15,000 FAA licensed aviators and 4,000 permanently based general aviation aircraft, 90% of which are based at 32 "core" general aviation airports in New Jersey; and

WHEREAS, The general aviation industry in New Jersey helps generate nearly \$4.6 billion in economic activity annually and provides the State's

workforce with approximately 70,000 jobs related to all aspects of civil aviation; and

WHEREAS, New Jersey's general aviation transportation infrastructure is critical for the continued support and growth of New Jersey-based corporate headquarters and plays a key role in the retention and attraction of major businesses and industrial firms to the State; and

WHEREAS, New Jersey has seen a decline in the number of its public use general aviation airports in the past few decades, shrinking from 82 in 1950 to only 45 such facilities in 2003; and

WHEREAS, The most recent public use general aviation airport built in New Jersey was in 1983 and since then 13 such facilities have closed; and

WHEREAS, New Jersey's system of public use general aviation airports is unique in that more than half of these airports are privately owned, as opposed to publicly owned, and are thus particularly vulnerable to sale to developers, closure and conversion to more profitable non-aviation uses; and

WHEREAS, The continued long-term loss of public use general aviation airports is the biggest single threat to the future viability of New Jersey's overall aviation system; and

WHEREAS, New Jersey is committed to both arresting the decline of its existing general aviation airport infrastructure and preserving and rehabilitating its core airport system, consistent with the principles of "Fix-it-First" and "Smart Growth";

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established a General Aviation Review Commission ("Commission") to examine and evaluate the current status and future prospects of New Jersey's general aviation airport system.

2. The Commission shall be within the Department of Transportation and consist of seventeen (17) members whom shall include the following:

- a. Commissioner of the Department of Transportation, or his designee;
- b. Commissioner of the Department of Environmental Protection, or his designee;
- c. Commissioner of the Department of Community Affairs, or her designee;
- d. State Treasurer, or his designee;
- e. Director of the State Planning Commission, or his designee;

f. Twelve (12) public members, to be appointed by the Governor, nine (9) of whom shall include the following: a representative of the League of Municipalities, a member of the New Jersey Aviation Association, a licensed commercial pilot, a licensed recreational pilot, a regional transportation official, a person with knowledge of aviation security, an owner/manager of a general aviation airport, a flight school owner or faculty member, a person with expertise in land use matters. The remaining three (3) public members shall have a general interest and/or expertise in aviation matters.

3. The Governor shall appoint the Chair of the Commission from among its members. The Commission shall organize as soon as may be practicable after the appointment of its members. The members shall appoint a secretary, who need not be a member of the Commission.

4. It shall be the charge and duty of the Commission to accomplish the following:

- a. Inventory the State's existing public use general aviation airport facilities and identify the role each facility plays vis-à-vis its location within the State and the demands of its users;
- b. Consider solutions and alternatives for the preservation of the existing public use general aviation airports, including but not limited to the public acquisition of privately owned airports and/or the purchase of airport development rights; and
- c. Develop recommendations and strategies for the preservation and

rehabilitation of existing public use general aviation airports, consistent with the principles of "Fix-it-First" and "Smart Growth".

5. The Commission shall meet at the call of the Chair. The Commission is authorized to call to its assistance and avail itself of the resources of any State department, board, bureau, commission or agency, to carry out its responsibilities under this Order. Each department, board, bureau, commission or agency is hereby required to cooperate with the Commission and furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order.

6. The Commission shall issue a final report to the Governor containing its findings and recommendations, including any recommendations for legislation that it deems appropriate, not later than one year after the Commission organizes. The work of the Commission shall be concluded upon completion of the report to the Governor and shall be dissolved thirty days from the date of that report.

7. Members of the Commission shall serve without compensation and at the pleasure of the Governor.

8. This Order shall take effect immediately.

Issued October 24, 2003.

EXECUTIVE ORDER NO. 79

WHEREAS, Senator John J. Fay, Jr. dedicated many years in public service to the people of the State of New Jersey; and

WHEREAS, Senator Fay served honorably as a member of the U.S. Navy; and

WHEREAS, Senator Fay inspired high school students as a teacher and a role-model for more than two decades; and

WHEREAS, Senator Fay held elected office as a Woodbridge Councilman, as a Middlesex County Freeholder, as a member of the General Assembly and as a State Senator; and

WHEREAS, Senator Fay served with distinction as the first Ombudsman for the Institutionalized Elderly; and

WHEREAS, Senator Fay was a person of extraordinary decency, courage and integrity, and an exceptional leader who served as a teacher, mentor, friend and Statesman to many individuals, including the Governor; and

WHEREAS, It is with deep sadness that we mourn the loss of Senator Fay and extend our sincere sympathy to his family and friends; and

WHEREAS, It is fitting and appropriate to honor the memory and the passing of Senator Fay;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Saturday, November 1, 2003, in recognition and mourning of the passing of Senator Fay.

2. This Order shall take effect immediately.

Issued October 31, 2003.

EXECUTIVE ORDER NO. 80

WHEREAS, Roy E. Prouty served as the Chief of Country Lakes Fire Company, a volunteer organization in Country Lakes, Pemberton Township; and

WHEREAS, Roy Prouty, in addition to being trained as a firefighter, was a certified medical technician, who responded to numerous fire and medical emergencies in his home community of Country Lakes; and

WHEREAS, Roy Prouty, through his volunteer service, selflessly shared his expertise, talent, time and energy with his community; and

WHEREAS, Roy Prouty was a courageous and dedicated firefighter and leader, as well as a loving husband and father of three children; and

WHEREAS, Roy Prouty lost his life in the line of duty, while attending to an injured victim, risking his own welfare to preserve that of others; and

WHEREAS, Roy Prouty's dedicated, selfless and courageous service to his community and to this State is exemplary and merits recognition; therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Monday, November 3, 2003, in recognition and mourning of Fire Chief Roy E. Prouty.

2. This Order shall take effect immediately.

Issued November 3, 2003.

EXECUTIVE ORDER NO. 81

WHEREAS, New Jersey's community colleges, the largest provider of higher education in the State, offer a wide range of high quality transfer and occupational programs plus technical training to large and small businesses throughout the State; and

WHEREAS, The State of New Jersey has a compelling interest in fully deploying community colleges to further the State's education, workforce, and economic development agenda; and

WHEREAS, The community colleges play a unique role in the State's higher education system, bridging the gap for students and workers who seek post-secondary education opportunities and training that is tailored to meet the needs of the State's businesses; and

WHEREAS, The Governor desires to provide the leadership necessary to establish a new partnership between the State of New Jersey and New Jersey's community colleges that will put the colleges squarely in support of important State priorities including five concrete goals for job growth over the next five years recently announced by the Governor.

NOW, THEREFORE, I, JAMES E. MC GREEVEY, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER AND DIRECT:

1. In order to better achieve important State goals by actively utilizing community colleges in support of these goals, there is hereby established the New Jersey Community College Compact, a new Statewide partnership between the State of New Jersey and New Jersey's community colleges.

2. Consistent with relevant State statutes and regulations, community college representatives shall be appointed to State government organizations, including but not limited to:

- a. The Governor's Education Cabinet;
- b. The State Employment and Training Commission;

- c. The New Jersey Commerce and Economic Growth Commission;
- d. Prosperity New Jersey; and
- e. Other organizations where community college expertise will contribute to the advancement of important State goals.

3. The New Jersey Council of County Colleges shall make recommendations on the deployment of community colleges in support of Statewide education initiatives administered by the New Jersey Department of Education. The Department shall then actively work with community colleges on Statewide education initiatives, including but not limited

- a. teacher education programs in response to projected teacher shortages in the State;
- b. the 12th grade option program through which qualified high school students can enroll in community college courses; and
- c. successful career academies throughout the State.

4. The New Jersey Council of County Colleges shall make recommendations in the deployment of community colleges in support of Statewide workforce development initiatives administered by the New Jersey Department of Labor. The Department shall actively work with community colleges on Statewide workforce development initiatives, including but not limited to:

- a. customized training programs through the Workforce Development Partnership Program;
- b. workforce literacy programs through the Supplemental Workforce Fund for Basic Skills; and
- c. the Self-Employment Assistance Program.

5. The New Jersey Council of County Colleges shall make recommendations on the deployment of community colleges in support of Statewide economic development initiatives administered by the New Jersey Commerce and Economic Growth Commission. The Commission shall then actively work with community colleges on Statewide economic development initiatives, including but not limited to:

- a. business attraction and development programs;
- b. urban enterprise zones and related urban programs; and

c. small business development centers.

6. The New Jersey Council of County Colleges shall make recommendations on the deployment of community colleges in support of Statewide homeland security training initiatives administered by the New Jersey Office of the Attorney General. The Office of the Attorney General shall then actively work with community colleges on the New Jersey Community College Homeland Security Training Project that has been endorsed by the New Jersey League of Municipalities, the New Jersey Association of Counties, and the New Jersey General Assembly.

7. The New Jersey Economic Development Authority and other State agencies and departments of State government shall likewise consider ways that they can fully utilize community colleges in meeting their Statewide goals.

8. The State of New Jersey shall promote the NJ Transfer program on its website and in appropriate state publications. NJ Transfer is a web-based Statewide initiative to improve the transfer of community college students to four-year colleges and universities in New Jersey.

9. The New Jersey Council of County Colleges shall prepare an annual report on the status of this new Community College Compact, including recommendations on how this partnership between the State of New Jersey and New Jersey's community colleges can be strengthened in future years.

10. This Order shall take effect immediately.

Issued November 4, 2003.

EXECUTIVE ORDER NO. 82

WHEREAS, Sergeant Joel Perez, a resident of the State of New Jersey, attended Barringer High School in Newark before returning to Puerto Rico and graduating from high school there; and

WHEREAS, Sergeant Perez subsequently returned to New Jersey and enlisted in the United States Army in 1998, where he became a highly decorated soldier; and

WHEREAS, Sergeant Perez served proudly as a member of the U.S. Army's 2nd Battalion, 5th Field Artillery Regiment, and was deployed to Iraq in the service of his country; and

WHEREAS, Sergeant Perez was a courageous soldier, a loving husband, son and brother and a devoted father; and

WHEREAS, Sergeant Perez has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country, and has been awarded the Bronze Star and Purple Heart posthumously; and

WHEREAS, Sergeant Perez' patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, November 7, 2003, in recognition and mourning of Sergeant Joel Perez.

2. This Order shall take effect immediately.

Issued November 6, 2003.

EXECUTIVE ORDER NO. 83

WHEREAS, Executive Order No. 60 (2003) established the Governor's Cabinet for Children; and

WHEREAS, recent events have underscored the need to critically, thoroughly and immediately examine the structure and mechanisms employed by the State to protect and to provide critical services to our children in need; and

WHEREAS, the work of the Governor's Cabinet for Children in this area of paramount importance will be greatly enhanced by the addition of high-ranking members of the Governor's Office;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The membership of the Governor's Cabinet for Children is expanded to twenty-two (22) members by adding the Chief of Management and Operations for the Governor's Office and the Chief Counsel to the Governor as members.
2. The Chief of Management and Operations is hereby designated as Chair of the Cabinet for Children.
3. Except as herein modified, all of the provisions of Executive Order No. 60 (2003) shall remain in full force and effect.
4. This Order shall take effect immediately.

Issued November 6, 2003.

EXECUTIVE ORDER NO. 84

I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. November 28, 2003, the day following Thanksgiving, shall be granted as a day off to employees who work in the Executive Departments of State Government and who are paid from State funds or from federal funds made available to the State, whose functions, in the opinion of their appointing authority, permit such absence.

2. An alternate day shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, precludes such absence on November 28, 2003.

Issued November 10, 2003.

EXECUTIVE ORDER NO. 85

WHEREAS, Army Specialist Ryan T. Baker, a resident of the State of New Jersey, graduated from Pemberton High School in 1997; and

WHEREAS, Specialist Baker subsequently enlisted in the United States Army; and

WHEREAS, Specialist Baker served proudly as a member of the U.S. Army's elite 101st Airborne Division, and was deployed to Iraq in the service of his country; and

WHEREAS, Specialist Baker was a courageous soldier, a loving son and a devoted father; and

WHEREAS, Specialist Baker has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Specialist Baker's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Thursday, November 20, 2003, in recognition and mourning of Army Specialist Ryan T. Baker.

2. This Order shall take effect immediately.

Issued November 19, 2003.

EXECUTIVE ORDER NO. 86

WHEREAS, Air Force Staff Sergeant Thomas A. Walkup, Jr., a resident of the State of New Jersey, graduated from Millville High School in 1996; and

WHEREAS, Staff Sergeant Walkup subsequently enlisted in the United States Air Force; and

WHEREAS, Staff Sergeant Walkup served proudly as a member of the U.S. Air Force, and was deployed to Afghanistan in the service of his country; and

WHEREAS, Staff Sergeant Walkup was a courageous soldier and a loving son and brother; and

WHEREAS, Staff Sergeant Walkup has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Staff Sergeant Walkup's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Tuesday, December 2, 2003, in recognition and mourning of Air Force Staff Sergeant Thomas A. Walkup.

2. This Order shall take effect immediately.

Issued December 1, 2003.

EXECUTIVE ORDER NO. 87

WHEREAS, Air Force Major Steven Plumhoff, a native of the State of New Jersey, graduated from Somerville High School in 1988; and

WHEREAS, Major Plumhoff subsequently graduated from the U.S. Air Force Academy in 1992; and

WHEREAS, Major Plumhoff served proudly as a member of the U.S. Air Force 58th Special Operations Wing, and was deployed to Afghanistan in the service of his country; and

WHEREAS, Major Plumhoff was a courageous soldier and a loving son, husband, father and brother; and

WHEREAS, Major Plumhoff has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Major Plumhoff's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, December 3, 2003, in recognition and mourning of Air Force Major Steven Plumhoff.

2. This Order shall take effect immediately.

Issued December 1, 2003.

EXECUTIVE ORDER NO. 88

WHEREAS, The President of the United States has authorized the Secretary of Defense to call up select members of the Reserve and National Guard to active duty in response to the continuing global war on terrorism, the armed conflict in Iraq, and heightened tensions in other areas; and

WHEREAS, The President of the United States has also authorized the Secretary of Homeland Security to similarly call up members of the Coast Guard Reserve; and

WHEREAS, Employees of the State of New Jersey are among the Reserve and National Guard members who have been mobilized into active duty with the United States Armed Forces; and

WHEREAS, Reserve and National Guard members who are activated during this crisis are serving vital national and State interests for which they deserve the full support of the State of New Jersey; and

WHEREAS, Many of the State employees who have been mobilized are serving on active duty for periods exceeding one year, and have been unable to utilize their entitlement for vacation leave provided to them by their State employer; and

WHEREAS, Existing State law, specifically N.J.S.A. 11A:6-2 limits the carry-over of vacation leave into the next succeeding year only, and such leave is forfeited if not used during that next succeeding year; and

WHEREAS, N.J.S.A. 11A:6-2 allows vacation leave not taken by an employee because of duties directly related to a State of Emergency declared by the Governor to accumulate indefinitely until such leave is able to be utilized; and

WHEREAS, The State of New Jersey encourages its employees to serve in the Reserve and National Guard and recognizes their many personal and economic sacrifices made when called to active duty; and

WHEREAS, These employees deserve the full support of the State of New Jersey and should not be penalized by the loss of their accumulated vacation leave as a result of their service to our Country and our State; and

WHEREAS, Such service is directly connected to emergent circumstances within the State of New Jersey and throughout the world;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. I hereby declare that those State employees who have been mobilized into active duty in response to the continuing global war on terrorism, armed conflict with Iraq, or other areas of heightened tension throughout the world, including the defense of our Homeland Security, are performing duties directly related to a State of Emergency, for the purposes set forth in N.J.S.A.11A:6-2.

2. Such State employees shall be permitted to accumulate vacation leave time that they are unable to utilize because of their mobilization into active duty, pursuant to a plan established by the Commissioner of Personnel, in consultation with affected State appointing authorities.

3. This Order shall take effect immediately.

Issued December 3, 2003.

EXECUTIVE ORDER NO. 89

WHEREAS, The holiday season brings an increased level of travel and number of riders on the trains throughout the metropolitan New York City region; and

WHEREAS, In light of the increased travel throughout the metropolitan New York City region, the New Jersey Transit Police and the New Jersey State Police have an increased presence on New Jersey Transit trains; and

WHEREAS, Today the United States Department of Homeland Security increased the National Homeland Security Advisory System to Orange which according to the Department of Homeland Security is declared when there is a high risk of terrorist attacks; and

WHEREAS, The New Jersey State Police on New Jersey Transit trains are required by law to exit the trains at the last stop in New Jersey while New York City and New York State law enforcement officers are required to exit trains at the last stop in New York; and

WHEREAS, The provisions of the Emergency Management Assistance Compact and the Interstate Civil Defense and Disaster Compact permit the States of New Jersey and New York to extend the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services; and

WHEREAS, The State of New York has or is about to enter an executive order extending law enforcement powers to New Jersey law enforcement officers accompanying trains into New York City; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions N.J.S.A. App.A:9-33 et seq. and N.J.S.A. 38A:3-6.1 and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers; and

WHEREAS, Upon Declaration of Emergency, the Governor is empowered to request aid pursuant to the Emergency Management Assistance Compact, N.J.S.A.38A:20-5 and the Interstate Civil Defense and Disaster Compact, N.J.S.A.38A:20-3 and to grant powers of arrest and other powers to law enforcement officers from other States;

THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do hereby ORDER and DIRECT:

1. That in order to facilitate the security on the trains and throughout the State of New Jersey, a State of Emergency exists in the State of New Jersey.

2. In accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, that the Adjutant General order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

3. That the State Director of Emergency Management implement the State Emergency Operations Plan and to direct the activation of county and municipal emergency operations plans as necessary.

4. In accordance with the Emergency Management Assistance Compact, N.J.S.A.38A:20-5 and the Interstate Civil Defense and Disaster Compact, N.J.S.A.38A:20-3, that mutual aid is requested of New York State and New York City law enforcement officers, to provide enhanced security on trains exiting the State of New York are hereby granted all law enforcement powers while providing such enhanced security on the trains and in the train stations in the State of New Jersey, including the power of arrest. This Declaration is not intended to alter or amend any compacts, policies, legal authorization or opinions regarding law enforcement powers during hot pursuit.

5. In accordance with N.J.S.A.App. A:9-40, that no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

6. That it shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies authorities

in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this state of emergency.

7. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Issued December 21, 2003.

EXECUTIVE ORDER NO. 90

WHEREAS, Army Specialist Marc Scott Seiden, a resident of the State of New Jersey, graduated from Hightstown High School in 1995; and

WHEREAS, Specialist Seiden subsequently enlisted in the U.S. Army in 2002, where he became an accomplished paratrooper; and

WHEREAS, Specialist Seiden served proudly as a member of the U.S. Army Second Battalion, 325th Airborne Regiment of the 82nd Airborne Division, and was deployed to Iraq in the service of his country; and

WHEREAS, Specialist Seiden was a courageous soldier and a loving son and brother; and

WHEREAS, Specialist Seiden has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Specialist Seiden's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, January 7, 2004, in recognition and mourning of Army Specialist Marc Scott Seiden.

2. This Order shall take effect immediately.

Issued January 6, 2004.

EXECUTIVE ORDER NO. 91

WHEREAS, Senator Laurence Weiss, a devoted family man, served honorably with the United States Army during World War II and the Korean War, and was awarded the Bronze and Silver Stars, the Purple Heart and the American, Asiatic and European Theater Ribbons; and

WHEREAS, Senator Weiss dedicated many years in public service to the people of the State of New Jersey; and

WHEREAS, Senator Weiss held several public offices, including President of the Woodbridge Library Board and member of the Middlesex County Planning Board, prior to being elected to the New Jersey Senate; and

WHEREAS, Senator Weiss was elected to the New Jersey State Senate in 1977, where he served for 14 years; and

WHEREAS, Senator Weiss held numerous leadership positions including service as Chairman of the Senate Appropriations Committee for 11

years and Chairman of the Joint Appropriations Committee for 6 years;
and

WHEREAS, It is with deep sadness that we mourn the loss of Senator Weiss
and extend our sincerest sympathy to his family and friends; and

WHEREAS, It is fitting and appropriate to honor the memory and the
passing of Senator Weiss;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the
State of New Jersey, by virtue of the authority vested in me by the Constitu-
tion and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of
New Jersey shall be flown at half-staff at all State departments, offices,
agencies and instrumentalities during appropriate hours on Thursday, Janu-
ary 8, 2004 in recognition and mourning of the passing of Senator Weiss.

2. This Order shall take effect immediately.

Issued January 6, 2004.

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Closed end loans, certain, collection of fees, charges by lender; certain permitted, amends C.17:3B-19, Ch.291.

Foreclosure on residential property, notice from mortgage lender, inclusion of list of programs, certain; required, amends C.2A:50-56, Ch.298.

Governmental unit deposits, eligible collateral, amends C.17:9-41, Ch.178.

Home repair financing contract, certain, bond, building permit; requirements, amends C.17:16C-64.2, Ch.94.

"New Jersey Home Ownership Security Act of 2002," C.46:10B-22 et seq., Ch.64.

Terrorism, funds, assets, attachment order for freezing; procedure, N.J.S.2C:66-1 et seq., Ch.22.

Power of attorney, authority, powers, certain; limited, C.46:2B-8.13a, Ch.138.

BONDS

"Dam, Lake, Stream, Flood Control, Water Resources and Wastewater Treatment Project Bond Act of 2003," Ch.162.

Debt repayment schedules; local bond law, alternative method, amends C.40A:2-8.1, Ch.306.

Joint Budget Oversight Committee, notice to, approval of for certain uses of BEIP funds; required, amends C.34:1B-139.1, Ch.274.

School district bonds, laws concerning; revised, electronic bid proposals; permitted, amends N.J.S.18A:24-16 et al., Ch.264.

CEMETERIES

"New Jersey Cemetery Act," C.45:27-1 et al., amends C.45:1-3.1, repeals N.J.S.8A:1-1 et al., Ch.261.

CHARITIES

Charitable gift annuities, certain, investment requirements; changed, amends N.J.S.17B:17-13.1, Ch.230.

CHILDREN

Adoption agencies, character of staff considered as condition for operation; required, C.9:3-40.1, amends C.9:3-40, Ch.11.

Catastrophic Illness in Children Relief Fund, eligibility; expanded, powers, duties of commission; changed, amends C.26:2-149 et al., Ch.260.

Child abuse record information checks for prospective approved home providers; required, C.30:5B-32 et seq., amends C.9:6-8.10a, Ch.185.

Domestic violence, release of records, certain, to surrogate in adoption proceedings, amends C.2C:25-34 et al., Ch.286.

DYFS, fingerprinting, photographing of children under supervision, certain; required, C.30:4C-3.7 et seq., Ch.40.

Juvenile offenders, certain, placement in adult county jails; permitted, amends C.2A:4A-37, Ch.287.

Minor child, determination of safety if caretaker incarcerated, procedures; established, C.2C:44-6.2 et al., Ch.301.

Morristown Memorial Hospital, specialty acute care children's hospital for Morris, Union counties; designated, C.26:2H-18f, amends C.26:2H-18e, Ch.98.

Office of the Child Advocate; established, C.52:17D-1 et seq., Ch.187.

Residential child care facilities staff, criminal history, child abuse record background checks; required, C.30:4C-27.16 et al., Ch.186.

Stillbirths, certificate of birth; established, amends R.S.26:8-37, Ch.312.

CHILDREN (Continued)

Youth suicide, attempted, completed, reporting; required, Prevention Advisory Council; established, C.30:9A-22 et seq., repeals C.30:9A-17, Ch.214.

CIVIL ACTIONS

Arbitration agreements, procedures, laws concerning; revised, C.2A:23B-1 et al., amends C.2A:23A-11, Ch.95.
Invasion of privacy, cause of action, damages, C.2A:58D-1 et al., Ch.206.

CIVIL RIGHTS

Civil rights, deprivation, pattern of official misconduct; criminalized, C.2C:30-5 et seq., Ch.31.
"Domestic Partnership Act," C.26:8A-1 et al., amends C.10:5-5 et al., Ch.246.
Joint Resolution No.IV of 1868, withdrawal of New Jersey's ratification of 14th amendment; revoked, J.R.2.
"Law Against Discrimination," provisions conformed to "Federal Fair Housing Act," amends C.2A:42-109 et al., Ch.180.
Seizure dogs, users of, certain, protection from discrimination; provided, amends C.10:5-5, Ch.293.

COLLEGES AND UNIVERSITIES

"Advisory Committee on Alternatively Accredited Medical School Clinical Clerkships"; established, C.18A:64H-9 et seq., Ch.133.
Alternate benefit program, death benefit, certain participants; changed, amends C.18A:66-176 et al., Ch.75.
Educational Opportunity Fund, board of directors, officers' terms, certain; increased, amends C.18A:71-32, Ch.222.
Megan's Law, compliance with federal Campus Sex Crimes Prevention Act; provided, amends C.2C:7-2 et al., Ch.34.
Meningococcal vaccinations for students at institutions of higher education, certain; required, C.18A:62-15.1 et seq., amends C.18A:61D-7, Ch.284.
New Jersey Presidents' Council, executive board, membership; changed, amends C.18A:3B-7 et al., Ch.99.
NJBEST program, designation of successor contributors, certain circumstances; provided, amends N.J.S.18A:71B-41, Ch.309.
SHBP, participation by part-time State employees, faculty members at State colleges; permitted, C.52:14-17.33a, Ch.172.
Voter registration, office of registrar at institutions of higher education; provided, C.18A:62-1.1 et al., amends C.19:31-6.3, Ch.36.

COMMERCE AND INDUSTRY

- Minority, women's business, documentation required for certification, certain State programs; changed, C.52:27H-21.22a et seq., amends C.52:27H-21.11 et al., Ch.189.
- New Jersey Business Employment Incentive Program, provisions; enhanced, C.34:1B-139.1 et seq., amends C.34:1B-125 et al., Ch.166.
- "New Jersey Film Production Assistance Act," C.34:1B-178 et seq., amends C.34:1B-5, Ch.182.

COMMISSIONS

- "Brain Injury Research Act," State Commission on; established, C.52:9EE-1 et seq., amends R.S.39:5-41, Ch.200.
- "Commission to Review Criminal Sentencing"; established, Ch.265.
- "Ergonomics in Education Study Commission"; established, Ch.58.
- Jewish Heritage Trail Study Commission; established, Ch.47.
- New Jersey Commission on Holocaust Education, membership; increased, amends C.18A:4A-2, Ch.288.
- State Health Benefits Commission, membership; increased, amends C.52:14-17.27, Ch.71.

COMMUNICATIONS

- Cable television, telecommunications service, provision, laws; changed, C.48:5A-64 et al., amends R.S.40:48-1 et al., Ch.38.
- CATV, late payment charges, certain; prohibited, C.48:5A-11.10 et al., Ch.247.
- "No telemarketing call list," provisions, certain; clarified, amends C.56:8-120 et al., Ch.208.
- Telemarketing sales calls, unsolicited, to customers, certain; prohibited, C.56:8-119 et seq., Ch.76.
- "The Public Safety Interoperable Communications Act," C.52:17E-1 et seq., Ch.235.
- Wireless phones, hands-free, use in moving vehicles; permitted, C.39:4-97.3 et seq., Ch.310.

CONFLICTS OF INTEREST

- Executive Commission on Ethical Standards, public membership; two added, amends C.52:13D-21, Ch.160.
- Receipt of certain things of value; regulated, C.52:13D-24.1 et al., amends C.52:13D-24, repeals N.J.S.2C:27-4 et al., Ch.255.

CONSTITUTION, STATE

Corporation Business Tax revenues, authorized uses, expanded for hazardous discharge remediation, amends Article VIII, Section II, paragraph 6; adopted.

Garden State Preservation Trust, cap on amount of bonds issued, increased, amends Article VIII, Section II, paragraph 7; adopted.

CONSUMER AFFAIRS

Home repair financing contract, certain, bond, building permit; requirements, amends C.17:16C-64.2, Ch.94.

"New Jersey Health Care Consumer Information Act," C.45:9-22.21 et seq., amends C.45:9-19.3 et al., Ch.96.

"New Jersey Home Ownership Security Act of 2002," C.46:10B-22 et seq., Ch.64.

"No telemarketing call list," provisions, certain; clarified, amends C.56:8-120 et al., Ch.208.

Telemarketing sales calls, unsolicited, to customers, certain; prohibited, C.56:8-119 et seq., Ch.76.

Window tinting sales installation, motor vehicle, informing customer of State restrictions; required, C.56:8-117 et seq., Ch.21.

CORPORATIONS

Limited liability companies, dissolved, certain, creditor protection, notice provisions given to creditors; claims barred, C.42:2B-29.1 et seq., Ch.12.

"New Jersey Cemetery Act," C.45:27-1 et al., amends C.45:1-3.1, repeals N.J.S.8A:1-1 et al., Ch.261.

CORRECTIONS

Bodily fluid, throwing at State juvenile facility employee, probation officer, aggravated assault, amends C.2C:12-13, Ch.283.

Community supervision for life, special sentence, certain circumstances; sex offenders, amends C.2C:43-6.4 et al., Ch.267.

Inmates, suspects, wanted person check before release, transfer; required, C.30:4-91.3c et seq., Ch.282.

Juvenile offenders, certain, placement in adult county jails; permitted, amends C.2A:4A-37, Ch.287.

Parolees, certain, harboring dangerous animals; prohibited, amends C.30:4-123.59, Ch.249.

Sex offenders, civilly committed, certain, regulations addressing security concerns, development; required, amends C.30:4-27.34, Ch.156.

COUNTIES

- Budget cap, local, school districts, temporary exception for security costs, certain; provided, C.18A:7F-5b, amends C.40A:4-45.3 et seq., Ch.92.
- County budget caps, adjustment for county correctional facility costs; authorized for budget year 2003, Ch.45.
- County identification cards, authority to issue, certain; revoked, amends C.2A:170-51.4 et al., repeals C.33:1-81.3 et seq., Ch.175.
- Investigators in county prosecutors' offices, rights, protections; granted, C.2A:157-10.1 et seq., amends N.J.S.2A:157-10, Ch.173.
- Local bond law; revised, C.40A:2-8.1, amends N.J.S.40A:2-10 et al., repeals N.J.S.40A:2-8, Ch.15.

COURTS

- Minor child, determination of safety if caretaker incarcerated, procedures; established, C.2C:44-6.2 et al., Ch.301.
- Special Civil Part of Superior Court, fee schedules for service of process; adjust for postal rates, certain, amends C.22A:2-37.1 et seq., Ch.259.

CRIMES AND OFFENSES

- Animal cruelty, certain, penalties; increased, amends R.S.4:22-17 et al., Ch.232.
- Assault, certain circumstances, penalty; upgraded, amends N.J.S.2C:12-1, Ch.218.
- Bodily fluid, throwing at State juvenile facility employee, probation officer, aggravated assault, amends C.2C:12-13, Ch.283.
- Child abuse record information checks for prospective approved home providers; required, C.30:5B-32 et seq., amends C.9:6-8.10a, Ch.185.
- Child pornography, offenders, certain, registration under Megan's Law; required, amends C.2C:7-2, Ch.219, Ch.220.
- Civil rights, deprivation, pattern of official misconduct; criminalized, C.2C:30-5 et seq., Ch.31.
- Cloning of human being, first degree crime, C.2C:11A-1 et al., Ch.203.
- "Commission to Review Criminal Sentencing"; established, Ch.265.
- Community supervision for life, special sentence, certain circumstances; sex offenders, amends C.2C:43-6.4 et al., Ch.267.
- Computer crimes, laws concerning; changed, amends C.2C:20-23 et al., repeals C.2C:20-26 et al., Ch.39.
- Criminal memorabilia, profits from sale, deposit into escrow account for victims; required, C.52:4B-61 et seq., repeals C.52:4B-26 et seq., Ch.190.

CRIMES AND OFFENSES (Continued)

- DNA testing, crimes for which blood, biological samples of perpetrators are collected; list expanded, C.53:1-20.28a, amends C.53:1-20.18 et al., Ch.183.
- Drug enforcement and demand reduction fines for possession, distribution of drugs, certain, penalty; doubled, C.2C:35-5.11, Ch.37.
- Ephedrine alkaloids, sale to minor, disorderly person, label required for sale, C.24:6H-1 et seq., Ch.57.
- Forfeiture of public office, statutes concerning; clarified, C.2C:51-2.1, amends N.J.S.2C:51-2, repeals C.40:69A-166, Ch.145.
- Fraudulent solicitation, collection of funds for charitable purpose; criminalized, amends N.J.S.2C:20-4, Ch.43.
- Inmates, suspects, wanted person check before release, transfer; required, C.30:4-91.3c et seq., Ch.282.
- Invasion of privacy, offense created, grading, C.2C:14-9 et al., Ch.206.
- Luring, enticing child, crime; upgraded to second degree, amends C.2C:13-6, Ch.229.
- Megan's Law, compliance with federal Campus Sex Crimes Prevention Act; provided, amends C.2C:7-2 et al., Ch.34.
- "Michael's Law," repeat drunk driving offenders, jail time, rehabilitation; required, amends R.S.39:4-50 et seq., Ch.315.
- Motor vehicle accidents, certain, leaving scene, offense; upgraded, amends R.S.39:4-129 et al., Ch.55.
- "New Jersey Prevailing Wage Act," criminal penalties for violations; established, amends C.34:11-56.35 et al., Ch.276.
- Residential child care facilities staff, criminal history, child abuse record background checks; required, C.30:4C-27.16 et al., Ch.186.
- Theft of identity, offenses involving false government documents, penalties; upgraded, C.2C:21-17.2 et seq., amends N.J.S.2C:1-3 et al., Ch.184.
- "Three Strikes" law, certain provisions; clarified, amends C.2C:43-7.1, Ch.48.
- Terrorism, funds, assets, attachment order for freezing; procedure, N.J.S.2C:66-1 et seq., Ch.22.
- Terrorism, soliciting, providing material support or resources, crime; clarified, amends C.2C:38-5, Ch.50.
- Vehicle title fraud, third degree crime, other violations; fourth degree, C.2C:21-4.8, amends R.S.39:10-24, Ch.217.
- Vehicular homicide, driving while fatigued, permissive inference of recklessness; established, amends N.J.S.2C:11-5, Ch.143.
- Victims of sexual assault, consultation with prosecutor relative to plea negotiations; permitted, C.2C:14-2.1, Ch.137.

CRIMINAL PROCEDURE

Bail bonds, issuance; procedure; changed, C.17:31-10 et seq., Ch.202.
Bail, full cash, certain offenses; required, amends C.2A:162-12, Ch.177.
Bail sufficiency hearings; permitted, C.2A:162-13 et seq., Ch.213.
Victims of sexual assault, consultation with prosecutor relative to plea negotiations; permitted, C.2C:14-2.1, Ch.137.

DOMESTIC RELATIONS

Adoption agencies, character of staff considered as condition for operation; required, C.9:3-40.1, amends C.9:3-40, Ch.11.
"Domestic Partnership Act," C.26:8A-1 et al., amends C.10:5-5 et al., Ch.246.
Domestic Violence Fatality and Near Fatality Review Board; established, C.52:27D-43.17a et seq., Ch.225.
Domestic violence, release of records, certain, to surrogate in adoption proceedings, amends C.2C:25-34 et al., Ch.286.
Domestic violence, victims, certain, discrimination against by insurers; prohibited, C.17:29B-16 et al., Ch.41.
Firearm possession, persons convicted of certain domestic violence offenses; prohibited, C.2C:25-21.1, amends C.2C:25-21 et al., Ch.277.
Marriages, certain, solemnized by unauthorized persons; validated, Ch.49.
Minor child, determination of safety if caretaker incarcerated, procedures; established, C.2C:44-6.2 et al., Ch.301.

DRUGS

Drug Utilization Review Board, membership; increased, amends C.30:4D-17.17a, Ch.262.
Ephedrine alkaloids, sale to minor, disorderly person, label required for sale, C.24:6H-1 et seq., Ch.57.
"New Jersey Pharmacy Practice Act," C.45:14-40 et seq., repeals R.S.45:14-1 et al., Ch.280.

ELECTIONS

Election district, splitting between two Congressional districts; permitted, amends C.19:4-10, Ch.5.
School budget, election calendar, Commissioner of Education, authority to change; clarified, amends C.19:60-1, Ch.20.
Voter registration, office of registrar at institutions of higher education; provided, C.18A:62-1.1 et al., amends C.19:31-6.3, Ch.36.

ENVIRONMENT

- Brownfields Redevelopment Task Force, membership; increased, amends C.58:10B-23, Ch.63.
- California Low Emission Vehicle program, implementation beginning January 1, 2009, certain circumstances, review commission; established, C.26:2C-8.15 et al., amends C.26:2C-8.10 et al., repeals C.26:2C-8.6 et al., Ch.266.
- "Commercial Landfill Regulatory Reform Act," C.48:13A-7.24 et seq., amends C.48:13A-4 et al., Ch.169.
- DEP personnel, park rangers, certain, law enforcement powers; expanded, amends C.13:1A-6.1 et al., Ch.147.
- Dredged materials, reuse, certain; authorized, C.12:6B-9, Ch.146.
- Hazardous substance cleanup, various laws regarding; changed, amends C.58:10-23.11g et al., Ch.224.
- New Jersey Environmental Infrastructure Trust, loans for projects; expenditure authorized, Ch.159.
- New Jersey Redevelopment Authority, grants for brownfield site cleanup, redevelopment; authorized, C.58:10B-6.1, Ch.121.
- Polychlorinated biphenyl-contaminated material, transportation in coastal zone; prohibited, C.13:19-33, Ch.65.
- Public park access parking lots, certain, use for commuter parking; permitted, C.13:8A-56, Ch.290.
- Remediation costs, certain, corporation business tax credit; established, C.54:10A-5.33 et seq., Ch.296.
- Solid waste disposal, certain, criminal penalties, fines; imposed, C.13:1E-9.6, amends C.13:1E-3 et al., Ch.231.
- Standard Industrial Classification System, replacement with North American Industrial Classification System by DEP; required, C.13:1D-138 et al., amends C.4:1C-9, Ch.157.
- State water supply lands, unused, certain, identification, recommendation for use in Statewide plan; required, C.58:1A-13.1 et seq., amends C.58:1A-3 et al., Ch.251.
- Underground storage tanks, laws concerning closures, upgrades, remediations; revised, amends C.58:10A-37.2 et al., Ch.148.

ESTATES AND TRUSTS

- Fiduciaries, use of accountants, out-of-State banks, certain; permitted, amends N.J.S.3B:14-23, Ch.33.
- Power of attorney, authority, powers, certain; limited, C.46:2B-8.13a, Ch.138.
- Trusts for minor beneficiaries, deferred fund distribution; permitted, C.3B:12-54.1, amends N.J.S.3B:12-54, Ch.258.

EXECUTIVE ORDERS

- Advisory Council Against Sexual Violence, Executive Order No.40 (2002); continued, membership; expanded, No.76.
- Air Force Major Steven Plumhoff; death commemorated, No.87.
- Air Force Staff Sergeant Thomas A. Walkup, Jr.; death commemorated, No.86.
- Army Specialist Marc Scott Seiden; death commemorated, No.90.
- Army Specialist Ryan T. Baker; death commemorated, No.85.
- Army Specialist Simeon Hunte; death commemorated, No.73.
- Billboard Policy and Procedure Review Task Force; established, 120 day moratorium on State business, No.59, continued No.66.
- Code of Conduct applicable to position of Governor; accepted, Advisory Ethics Panel; created, No.77.
- Commission on Jobs, Growth and Economic Development; established, No.56.
- Corporal Michael E. Curtin; death commemorated, No.55.
- Education Mandate Review Study Commission; established, No.75.
- Free Cuba Task Force; established, supersedes Executive Order No. 24 (Whitman), No.62.
- General Aviation Review Commission; established, No.78.
- Governor's Advisory Council on HIV/AIDS and Related Blood-Borne Pathogens; established, rescinds, supersedes Executive Order No.45 (Florio) and Executive Order No.29 (Whitman), No.61.
- Governor's Cabinet for Children; established, No.60; membership expanded, No.83.
- Governor's Fire Service and Safety Task Force; established, No.53.
- Governor's Task Force on Women and Bleeding Disorders; established, No.51.
- Highlands Task Force; established, No.70.
- National Guard, call to active duty; authorized, No.52.
- National Guard personnel, immediate family members, health benefits; promoted, No.54.
- New Jersey Community College Compact; established, No.81.
- Petty Officer First Class David M. Tapper; death commemorated, No.65.
- Police Officer Mary Ann Collura; death commemorated, No.58.
- Ray E. Prouty, Chief of Country Lakes Fire Company; death commemorated, No.80.
- Renewable Energy Task Force; created, No.45.
- Schools Corporation under New Jersey Economic Development Authority, Attorney General added to membership; Executive Order No. 24 (2002) amended, No.47.
- Second Lieutenant Richard Torres; death commemorated, No.72.

EXECUTIVE ORDERS (Continued)

- Senator John J. Fay, Jr.; death commemorated, No.79.
"Senator John J. Fay, Jr. Hall" at Senator Garrett W. Hagedorn Hospital; designated, No.74.
Senator Laurence Weiss; death commemorated, No.91.
September 11, 2003, second anniversary of September 11, 2001 terrorist attacks; commemorated, No.67.
Sergeant Joel Perez; death commemorated, No.82.
Set-aside for small businesses, percentage of State contracting dollars; increased, No.71.
Staff Sergeant Terry Hemingway; death commemorated, No.57.
State employees called to active military duty, seniority, benefits; maintained, No.50.
State employees, mobilized into active military duty, accumulation of vacation leave time; permitted, No.88.
State employees, November 28, 2003; granted as a day off, No.84.
State of emergency, facilitation of security on trains, throughout State; declared, No.89.
State of emergency relative to Hurricane Isabel; declared, No.68; terminated, No.69.
State of emergency relative to power outage; declared, No.63; terminated, No.64.
State of emergency, severe weather conditions due to snow, winds, freezing temperatures; declared, No.48, terminated, No.49.
Video Lottery Study Commission; established, No.46.

FEDERAL AND INTERSTATE RELATIONS

- Criminal history background checks, statutes concerning; revised, C.40:23-54 et al., amends N.J.S.2B:1-3 et al., Ch.199.
Diplomatic immunity, motor vehicle offenses, certain, procedures, notification to U.S. State Department; required, C.39:5-53 et seq., Ch.23.
Federal law enforcement officers, certain, power of arrest for violations, certain; provided, amends C.2A:154-5, Ch.139.
Interstate compact agencies, enrollment of officers, employees, purchase of service credit in PERS; permitted, amends C.43:15A-73 et al., Ch.263.
Port Authority of New York and New Jersey, use of transported remains of September 11, 2001 victims in memorial; required, C.32:1-35.52a et seq., Ch.198.

FEES AND COSTS

- Fees, penalties, various; established, increased, C.24:2-9 et al., amends R.S.34:7-3 et al., Ch.117.

FEES AND COSTS (Continued)

Special Civil Part of Superior Court, fee schedules for service of process; adjust for postal rates, certain, amends C.22A:2-37.1 et seq., Ch.259.

FIRE SAFETY

Elevator buildings, use of fire recall keys, key lock boxes; required, C.52:27D-198.13 et seq., Ch.211.

Firefighting equipment, demonstration, operation of by certain persons; permitted, C.52:27D-25ii, Ch.26.

"Fire Service Resource Emergency Deployment Act," C.52:14E-11 et seq., Ch.28.

Water utilities, standby fees, charges for fire protection systems, certain; prohibited, amends C.40:14B-21 et al., Ch.278.

FIRST AID AND RESCUE SQUADS

Emergency response priority control system, study program by DOT; required, Ch.2.

Epinephrine, administration by EMTs, certain circumstances; permitted, C.26:2K-47.1 et seq., amends C.26:2K-57, Ch.1.

FISH, GAME AND WILDLIFE

DEP personnel, park rangers, certain, law enforcement powers; expanded, amends C.13:1A-6.1 et al., Ch.147.

Shellfish harvest, marine fisheries laws, penalties for violation; increased, C.58:24-10.1, amends C.23:2B-14 et al., Ch.8.

GAMES AND GAMBLING

Bingo advertising, restrictions, certain; changed, C.5:8-36.1, amends C.5:8-36, Ch.61.

Casino Control Act, fees, taxes; law revised, C.5:12-148.1 et al., amends C.5:12-82 et al., Ch.116.

HANDICAPPED PERSONS

Autism Medical Research and Treatment Fund; established, C.30:6D-62.2, amends R.S.39:5-41, Ch.144.

"Danielle's Law," staff working with persons with developmental disabilities, traumatic brain injury, calling 911 in situations, certain; required, C.30:6D-5.1 et seq., Ch.191.

Handicapped access, public buildings, multi-family dwellings, requirements; changed, amends C.10:5-12.4 et al., Ch.72.

"Law Against Discrimination," provisions conformed to "Federal Fair Housing Act," amends C.2A:42-109 et al., Ch.180.

Parking in restricted space for handicapped persons, fine; increased, amends R.S.39:4-197, Ch.161.

HANDICAPPED PERSONS (Continued)

- Programs, certain, errors in estimating income for eligibility, laws concerning; changed, C.30:4D-21.4 et al., Ch.281.
- Seizure dogs, users of, certain, protection from discrimination; provided, amends C.10:5-5, Ch.293.
- State Council on Developmental Disabilities, law revised for conformance with federal statutes, C.30:1AA-1.1 et seq., amends C.30:1AA-1 et al., Ch.54.

HEALTH

- "Brain Injury Research Act," State Commission on; established, C.52:9EE-1 et seq., amends R.S.39:5-41, Ch.200.
- Catastrophic Illness in Children Relief Fund, eligibility; expanded, powers, duties of commission; changed, amends C.26:2-149 et al., Ch.260.
- Dental service corporations, experience rating, provisions concerning; updated, C.17:48C-19.1, amends C.17:48C-20, repeals C.17:48C-19, Ch.154.
- Epinephrine, administration by EMTs, certain circumstances; permitted, C.26:2K-47.1 et seq., amends C.26:2K-57, Ch.1.
- Fibrodysplasia ossificans progressiva, research, awareness; encouraged, J.R.4.
- HIV drug resistance testing, Medicaid coverage; required, amends C.30:4D-6, Ch.294.
- Human stem cell research; permitted, C.26:2Z-1 et al., Ch.203.
- "Lead Hazard Control Assistance Act," C.52:27D-437.1 et seq., amends C.24:14A-6 et al., Ch.311.
- Long-term care facilities, provision of list of services related to care of Alzheimer's patients; required, C.26:2M-7.1, Ch.268.
- Long-term care facilities, training for staff relative to Alzheimer's disease, related disorders; required, C.26:2M-7.2, Ch.269.
- Long-term care insurance, regulation; provided, C.17B:27E-1 et seq., Ch.207.
- Mandated Health Benefits Advisory Commission; established, C.17B:27D-1 et seq., Ch.193.
- Meningococcal vaccinations for students at institutions of higher education, certain; required, C.18A:62-15.1 et seq., amends C.18A:61D-7, Ch.284.
- Mercury health advisory concerning contaminated fish, notification; required, C.26:2-179, Ch.174.
- MMR vaccine, preparation of pamphlet, blood test to determine immunity, certain circumstances; required, C.26:2N-8 et seq., Ch.257.
- New Jersey Electronic Death Registration System, use; required, C.26:8-24.1 et al., amends R.S.26:6-1 et al., Ch.221.

HEALTH (Continued)

- "New Jersey Health Care Consumer Information Act," C.45:9-22.21 et seq., amends C.45:9-19.3 et al., Ch.96.
- New Jersey Obesity Prevention Task Force; established, Ch.303.
- "New Jersey Pharmacy Practice Act," C.45:14-40 et seq., repeals R.S.45:14-1 et al., Ch.280.
- "Nursing Home Quality of Care Improvement Fund Act," C.26:2H-92 et seq., Ch.105.
- Stillbirths, certificate of birth; established, amends R.S.26:8-37, Ch.312.
- Unemployment insurance, payroll taxes, certain; redirected to health care subsidy fund, regulations; changed, amends C.26:2H-18.58 et al., Ch.107.
- Unpaid hospital accounts, assignment to Hospital Care Payment Commission; permitted, C.17B:30-41 et seq., Ch.112.

HIGHWAYS

- Highway safety, program for improvement, C.39:3-20.3 et seq., amends C.39:4-203.5 et al., Ch.131.
- New Jersey Highway Authority; abolished, transfer of projects, functions, to New Jersey Turnpike Authority, C.27:23-41 et al., amends C.27:23-1 et al., repeals C.27:23-5.1 et al., Ch.79.
- Outdoor advertising fee; imposed, C.54:4-11.1, amends C.27:5-19, Ch.124.

HISTORICAL AFFAIRS

- Jewish Heritage Trail Study Commission; established, Ch.47.
- "Liberty Day," commemorating birthday of James Madison, March 16; designated, C.36:2-76 et seq., Ch.35.

HOLIDAYS AND OBSERVANCES

- "Liberty Day," commemorating birthday of James Madison, March 16; designated, C.36:2-76 et seq., Ch.35.
- "School Psychologists Month," April; designated, C.36:2-78 et seq., J.R.1.

HOSPITALS

- Morristown Memorial Hospital, specialty acute care children's hospital for Morris, Union counties; designated, C.26:2H-18f, amends C.26:2H-18e, Ch.98.
- Pediatric rehabilitation hospitals, certain, 100 percent reimbursement from Medicaid; required, amends C.30:4D-7h, Ch.223.
- Unpaid hospital accounts, assignment to Hospital Care Payment Commission; permitted, C.17B:30-41 et seq., Ch.112.

HOUSING

- Carbon monoxide detectors, installation in single, two-family homes, certain circumstances; required, C.52:27D-133.5, amends C.52:27D-133.3 et al., Ch.44.
- Congregate housing, power assisted, remote control doors, certain; requirements, C.52:27D-188.1 et seq., Ch.305.
- "Lead Hazard Control Assistance Act," C.52:27D-437.1 et seq., amends C.24:14A-6 et al., Ch.311.
- Local housing authorities, reporting of crimes, certain; required, C.52:27D-3.4, amends C.40A:12A-45, Ch.254.
- "Multifamily Housing Preservation and Receivership Act," C.2A:42-114 et seq., amends N.J.S.2B:12-20 et al., repeals C.2A:42-79 et al., Ch.295.
- Multiple dwellings, age-restricted, filing evacuation plan with municipality; required, C.52:27D-224.2, amends C.52:27D-224.1 et al., Ch.53.
- Shower rails in senior rental projects, certain; required, C.55:14K-7.1, Ch.101.
- Tenants, list maintained by landlord in case of emergency, certificate of registration, filing by unit owners; required, amends C.46:8-27 et seq., Ch.56.

HUMAN SERVICES

- Autism Medical Research and Treatment Fund; established, C.30:6D-62.2, amends R.S.39:5-41, Ch.144.
- "Danielle's Law," staff working with persons with developmental disabilities, traumatic brain injury, calling 911 in situations, certain; required, C.30:6D-5.1 et seq., Ch.191.
- Drug Utilization Review Board, membership; increased, amends C.30:4D-17.17a, Ch.262.
- DYFS, fingerprinting, photographing of children under supervision, certain; required, C.30:4C-3.7 et seq., Ch.40.
- HIV drug resistance testing, Medicaid coverage; required, amends C.30:4D-6, Ch.294.
- Pediatric rehabilitation hospitals, certain, 100 percent reimbursement from Medicaid; required, amends C.30:4D-7h, Ch.223.
- Programs, certain, errors in estimating income for eligibility, laws concerning; changed, C.30:4D-21.4 et al., Ch.281.
- Sex offenders, civilly committed, certain, regulations addressing security concerns, development; required, amends C.30:4-27.34, Ch.156.
- State Council on Developmental Disabilities, law revised for conformance with federal statutes, C.30:1AA-1.1 et seq., amends C.30:1AA-1 et al., Ch.54.

HUMAN SERVICES (Continued)

- "Statewide Tuition Waiver Program," students under care of DYFS, certain; provided, C.30:4C-101 et seq., Ch.132.
- Youth suicide, attempted, completed, reporting; required, Prevention Advisory Council; established, C.30:9A-22 et seq., repeals C.30:9A-17, Ch.214.

INSURANCE

- Annuities, individual, deferred, certain, nonforfeiture rate; reduced, amends C.17B:25-20, Ch.152.
- Automobile insurance laws; revised, C.17:30A-2.1 et al., amends C.17:30A-2 et al., repeals C.39:6-64 et al., Ch.89.
- Bail bonds, issuance; procedure; changed, C.17:31-10 et seq., Ch.202.
- Dental insurance benefits, payment of out-of-network benefits; procedures, C.17:48C-8.3 et al., Ch.250.
- Dental service corporations, experience rating, provisions concerning; updated, C.17:48C-19.1, amends C.17:48C-20, repeals C.17:48C-19, Ch.154.
- Domestic violence, victims, certain, discrimination against by insurers; prohibited, C.17:29B-16 et al., Ch.41.
- Health benefits plans, changes in status, premium, notification by employer to employees; required, C.34:11A-16 et al., Ch.27.
- Insurance producers, certain, protection with insurers transferring business, certain; provided, amends C.17:22-6.14a, Ch.153.
- Long-term care insurance, regulation; provided, C.17B:27E-1 et seq., Ch.207.
- Mandated Health Benefits Advisory Commission; established, C.17B:27D-1 et seq., Ch.193.
- National guard members, State active duty, health benefits coverage through SHBP; provided, C.52:14-17.32h., Ch.142.
- Second Injury Fund, transfer of funds to General Fund, calculation of surcharge; changed, amends R.S.34:15-94, Ch.111.
- Small employer health benefits purchasing alliances, rating provisions; changed, amends C.17B:27A-25, Ch.163.
- Surplus lines insurers, policy forms; deregulated, amends C.17:22-6.42 et seq., Ch.179.

JOINT RESOLUTIONS

- Fibrodysplasia ossificans progressiva, research, awareness; encouraged, J.R.4.
- Joint Resolution No.IV of 1868, withdrawal of New Jersey's ratification of 14th amendment; revoked, J.R.2.

JOINT RESOLUTIONS (Continued)

"School Psychologists Month," April; designated, C.36:2-78 et seq., J.R.1.
United States Department of Veterans' Affairs, location of new national cemetery; memorialized, J.R.3.

LABOR

Health benefits plans, changes in status, premium, notification by employer to employees; required, C.34:11A-16 et al., Ch.27.
New Jersey Business Employment Incentive Program, provisions; enhanced, C.34:1B-139.1 et seq., amends C.34:1B-125 et al., Ch.166.
"New Jersey Prevailing Wage Act," criminal penalties for violations; established, amends C.34:11-56.35 et al., Ch.276.
Second Injury Fund, transfer of funds to General Fund, calculation of surcharge; changed, amends R.S.34:15-94, Ch.111.

LANDLORD AND TENANT

Shower rails in senior rental projects, certain; required, C.55:14K-7.1, Ch.101.
Tenants, list maintained by landlord in case of emergency, certificate of registration, filing by unit owners; required, amends C.46:8-27 et seq., Ch.56.
Tenant security deposits, laws regarding; changed, C.46:8-21.4, amends C.46:8-19 et al., Ch.188.

LEGISLATURE

District offices, employment of relatives, certain; prohibited, C.52:11-5.1, Ch.307.
Governor's annual budget message to Legislature, submission of proposed budgets from Abbott districts, deadline; extended, C.18A:7F-5c, amends C.52:27B-20 et al., Ch.275.
Health benefits for legislators, certain; restrictions, C.52:11-5.2, Ch.308.
Mandated Health Benefits Advisory Commission; established, C.17B:27D-1 et seq., Ch.193.
Receipt of certain things of value; regulated, C.52:13D-24.1 et al., amends C.52:13D-24, repeals N.J.S.2C:27-4 et al., Ch.255.

MILITARY AND VETERANS

Civil Air Patrol, integration in homeland security initiatives, study; required, Ch.103.
Distinguished service medal for individual who died while on active duty, documentary requirements; clarified, amends N.J.S.38A:15-2, Ch.237.
Korean war veterans, certain, issuance of service award; authorized, Ch.16.

MILITARY AND VETERANS (Continued)

- Motor vehicle lease, cancellation by person engaged in military service, certain circumstances; permitted, amends C.38:23C-15, Ch.304.
- National guard members:
 State active duty, health benefits coverage through SHBP; provided, C.52:14-17.32h., Ch.142.
 State active duty, minimum per diem base pay; established, amends N.J.S.38A:4-3, Ch.141.
- New Jersey Naval Militia Joint Command, assessment of mission; required, Ch.300.
- United States Department of Veterans' Affairs, location of new national cemetery; memorialized, J.R.3.
- Veterans' benefits, certain, veterans of Operation Enduring Freedom, Operation Iraqi Freedom, eligibility; extended, amends N.J.S.11A:5-1 et al., Ch.197.
- Veterans' homes, certain, sales from concession stands, exemption from sales and use tax; provided, C.54:32B-8.54, Ch.165.

MOTOR VEHICLES

- Automobile insurance laws; revised, C.17:30A-2.1 et al., amends C.17:30A-2 et al., repeals C.39:6-64 et al., Ch.89.
- Buses, certain, reentering traffic, right of way; established, C.39:4-87.1, Ch.226.
- California Low Emission Vehicle program, implementation beginning January 1, 2009, certain circumstances, review commission; established, C.26:2C-8.15 et al., amends C.26:2C-8.10 et al., repeals C.26:2C-8.6 et al., Ch.266.
- Diplomatic immunity, offenses, certain, procedures, notification to U.S. State Department; required, C.39:5-53 et seq., Ch.23.
- DUI arrestees, holding in protective custody by municipality, certain circumstances; permitted, C.40:48-1.3, amends R.S.40:48-1, Ch.164.
- Electric personal assistive mobility devices, regulations concerning; changed, amends C.39:4-14.10, Ch.88.
- Emergency response priority control system, study program by DOT; required, Ch.2.
- "Florence's Law," blood level to determine drunk driving; reduced to .08%, amends R.S.39:4-50 et al., Ch.314.
- Highway safety, program for improvement, C.39:3-20.3 et seq., amends C.39:4-203.5 et al., Ch.131.
- Ignition key, devices, certain, production, delivery on basis of VIN; certain, prohibited as disorderly persons offense, C.2C:40-23, Ch.170.

MOTOR VEHICLES (Continued)

- Lessors to notify lessees of change in registration policies, procedures; required, termination notice; eliminated, amends R.S.39:3-4, Ch.212.
- Licenses, permits, certain, authority of chief administrator; clarified, C.39:3-10n, amends C.39:3-10f et al., Ch.204.
- "Michael's Law," repeat drunk driving offenders, jail time, rehabilitation; required, amends R.S.39:4-50 et seq., Ch.315.
- Motor vehicle accidents, certain, leaving scene, offense; upgraded, amends R.S.39:4-129 et al., Ch.55.
- Motor vehicle lease, cancellation by person engaged in military service, certain circumstances; permitted, amends C.38:23C-15, Ch.304.
- Motor vehicle surcharges, certain, 60-day amnesty period; provided, Ch.110.
- Parking in restricted space for handicapped persons, fine; increased, amends R.S.39:4-197, Ch.161.
- "The Motor Vehicle Security and Customer Service Act," C.39:2A-1 et al., amends C.17:29A-35 et al., repeals R.S.39:2-5 et al., Ch.13.
- Vehicle title fraud, third degree crime, other violations; fourth degree, C.2C:21-4.8, amends R.S.39:10-24, Ch.217.
- Vehicular homicide, driving while fatigued, permissive inference of recklessness; established, amends N.J.S.2C:11-5, Ch.143.
- Window tinting sales installation, motor vehicle, informing customer of State restrictions; required, C.56:8-117 et seq., Ch.21.
- Wireless phones, hands-free, use in moving vehicles; permitted, C.39:4-97.3 et seq., Ch.310.

MUNICIPALITIES

- "Abandoned Properties Rehabilitation Act," C.55:19-78 et seq., amends C.40:48-2.4 et al., Ch.210.
- Animal control officers, violation of animal cruelty law, employment with municipality; prohibited, C.4:22-57 et al., amends C.4:19-15.16a et seq., Ch.67.
- Animal shelters, care facilities, operated by nonprofit entities, financing by local governments; authorized, C.40A:2-3.1, Ch.289.
- Budget cap, local, school districts, temporary exception for security costs, certain; provided, C.18A:7F-5b, amends C.40A:4-45.3 et seq., Ch.92.
- Debt repayment schedules; alternative method, amends C.40A:2-8.1, Ch.306.
- Display of American flag, yellow ribbons, signs supporting troops, municipal ordinance, homeowners' association rules against; prohibited, C.40:48-2.58 et al., Ch.209.

MUNICIPALITIES (Continued)

- DUI arrestees, holding in protective custody by municipality, certain circumstances; permitted, C.40:48-1.3, amends R.S.40:48-1, Ch.164.
- Economic development incentives for rehabilitation, economic recovery in municipalities, certain; expanded, amends C.52:27BBB-53 et seq., Ch.194.
- Hotel, motel occupancy tax; authorized, certain, C.40:48F-1 et al., Ch.114.
- Local bond law; revised, C.40A:2-8.1, amends N.J.S.40A:2-10 et al., repeals N.J.S.40A:2-8, Ch.15.
- Local housing authorities, reporting of crimes, certain; required, C.52:27D-3.4, amends C.40A:12A-45, Ch.254.
- Local public contracts law, exceptions, certain; authorized, C.40A:11-15.3, amends C.40A:11-5 et al., Ch.150.
- Long-term property tax exemptions, laws concerning; revised, C.40A:12A-4.1 et al., amends C.40A:12A-5 et al., Ch.125.
- "Main Street New Jersey" program, municipal eligibility requirements; changed, C.52:27D-454.1, Ch.292.
- "Neighborhood Revitalization State Tax Credit Act," provisions, certain; revised, C.52:27D-500, amends C.52:27D-491 et al., Ch.59.
- Officials, elected, municipalities, commission form, publication of election, campaign expenses, requirement; removed, amends R.S.40:73-1, Ch.78.
- "State Uniform Construction Code Act," violations, penalties; increased, amends C.52:27D-138, Ch.228.
- "Tax Lien Financing Corporation Act," authorization for qualified municipalities, C.52:27BBB-66 et seq., Ch.120.
- UEZ, reimbursement for certain municipal account monies, borrowing from assistance fund; permitted, C.52:27H-66.6a, Ch.6.
- Urban enterprise zone, creation in Gloucester City, Camden County; authorized, amends C.52:27H-62 et al., Ch.285.

NURSING HOMES, ROOMING AND BOARDING HOUSES

- Long-term care facilities, provision of list of services related to care of Alzheimer's patients; required, C.26:2M-7.1, Ch.268.
- Long-term care facilities, training for staff relative to Alzheimer's disease, related disorders; required, C.26:2M-7.2, Ch.269.
- "Nursing Home Quality of Care Improvement Fund Act," C.26:2H-92 et seq., Ch.105.

PARKS

- Public park access parking lots, certain, use for commuter parking; permitted, C.13:8A-56, Ch.290.

PENSIONS AND RETIREMENT

- County and county college employees, municipal employees, certain, TPAF members; additional benefits, C.52:14-17.32l, Ch.128.
- Interstate compact agencies, enrollment of officers, employees, purchase of service credit in PERS; permitted, amends C.43:15A-73 et al., Ch.263.
- Local employers, contributions to PERS, PFRS; adjusted, exemption from cap; provided, C.40A:4-45.43, amends C.43:15A-24 et al., Ch.108.
- PERS:
Prosecutors part, prior service; credited, amends C.43:15A-156, Ch.140.
- PFRS members, additional benefits, certain; election by employer, C.52:14-17.32m, Ch.130.
- PFRS, State Police Retirement System, accidental death benefits, remarriage provision for surviving spouse; eliminated, amends C.43:16A-1 et al., Ch.181.
- Public employees of agencies, certain, additional PERS benefits; certain, agency election, issuance of refunding bonds; permitted, C.43:15A-24.2, Ch.127.
- Retirement system for employees of Jersey City, loan, adjustment rate; changed, amends C.43:13-22.67 et al., Ch.167.
- School board, educational services, jointure commissions; additional benefits, election by employer, Ch.129.

POLICE

- Federal law enforcement officers, certain, power of arrest for violations, certain; provided, amends C.2A:154-5, Ch.139.
- Seniority credit, computation for personnel, certain, transferred to Division of State Police, method; revised, amends C.53:1-8.2, Ch.60.
- State Police, titles, positions, qualifications; listing, postings for certain; required, C.53:1-5.3, Ch.29.

PROFESSIONS AND OCCUPATIONS

- Check cashers, laws concerning; revised, amends C.17:15A-31 et al., Ch.252.
- Cosmetologist-hairstylist, display of license without showing home address; permitted, C.45:5B-12.2, Ch.297.
- Home inspectors, qualification provisions, certain; revised, amends C.45:8-72, Ch.77.
- Land surveying work, certain, waiver of corner markers by property owners; permitted, C.45:8-36.3, Ch.14.

PROFESSIONS AND OCCUPATIONS (Continued)

- Licensees, inactive, completion of continuing education requirements for reactivation of license, three years prior to application; permitted, amends C.45:1-7.3, Ch.100.
- "Licensing of Crane Operators Act," C.45:26-1 et seq., Ch.171.
- Medical gas piping, installation in facilities, certain, certification; required, C.45:14C-28 et seq., amends C.45:14C-10, Ch.205.
- "New Jersey Pharmacy Practice Act," C.45:14-40 et seq., repeals R.S.45:14-1 et al., Ch.280.
- Physical therapy, practice, statutes; revised, C.45:9-34b et seq., amends C.45:9-37.13 et al., Ch.18.
- State Board of Mortuary Science, membership; increased, amends C.45:7-35, Ch.10.
- Veterinary medicine, various statutes; changed, amends R.S.45:16-4 et al., Ch.227.

PUBLIC CONTRACTS

- Local public contracts law, exceptions, certain; authorized, C.40A:11-15.3, amends C.40A:11-5 et al., Ch.150.
- Public works contractor registration, bidding requirements; changed, registration; required, amends C.34:11-56.50 et al., Ch.91.
- School construction management services, prequalification of certain persons performing; required, C.18A:18A-27.1, Ch.302.

PUBLIC EMPLOYEES

- Forfeiture of public office, statutes concerning; clarified, C.2C:51-2.1, amends N.J.S.2C:51-2, repeals C.40:69A-166, Ch.145.
- Health care waiver program, extension to other coverage, certain circumstances; permitted, C.18A:64A-13.1, amends C.40A:10-17.1 et al., Ch.3.
- Immunity for public entities, employees relative to actions in response to CBR agents; provided, C.59:6-8 et seq., Ch.51.
- Receipt of certain things of value; regulated, C.52:13D-24.1 et al., amends C.52:13D-24, repeals N.J.S.2C:27-4 et al., Ch.255.
- "School Employees Contract Resolution and Equity Act," C.34:13A-31 et seq., Ch.126.
- Seniority credit, computation for personnel, certain, transferred to Division of State Police, method; revised, amends C.53:1-8.2, Ch.60.
- SHBP, participation by part-time State employees, faculty members at State colleges; permitted, C.52:14-17.33a, Ch.172.
- State employees, SHBP benefits; modified, alternate disciplinary review procedures; provided, amends C.52:14-17.28 et al., Ch.119.

PUBLIC RECORDS

Certificates of searches for municipal liens, requirement for permanent record, certain; eliminated, amends R.S.54:5-16, Ch.52.

PUBLIC UTILITIES

Cable television, telecommunications service, provision, laws; changed, C.48:5A-64 et al., amends R.S.40:48-1 et al., Ch.38.

"Commercial Landfill Regulatory Reform Act," C.48:13A-7.24 et seq., amends C.48:13A-4 et al., Ch.169.

Government energy aggregation, process; revised, C.48:3-93.1 et seq., amends C.48:3-85 et al., repeals C.48:3-93, Ch.24.

Late payment charges to customers, certain; prohibited, C.48:3-2.3 et al., Ch.247.

Municipal electric power systems, rural electric cooperatives, status under EDECA; clarified, amends C.48:3-88 et al., Ch.248.

Programs, certain, errors in estimating income for eligibility, laws concerning; changed, C.30:4D-21.4 et al., Ch.281.

Water utilities, standby fees, charges for fire protection systems, certain; prohibited, amends C.40:14B-21 et al., Ch.278.

RACING

Horse racing, regulation, certain; changed, C.5:5-25.1 et al., amends C.5:10-7, repeals C.5:5-43.1, Ch.151.

New Jersey Racing Commission; reconstituted, membership requirements; changed, amends C.5:5-23, Ch.32.

REAL PROPERTY

"Abandoned Properties Rehabilitation Act," C.55:19-78 et seq., amends C.40:48-2.4 et al., Ch.210.

Display of American flag, yellow ribbons, signs supporting troops, municipal ordinance, homeowners' association rules against; prohibited, C.40:48-2.58 et al., Ch.209.

Land surveying work, certain, waiver of corner markers by property owners; permitted, C.45:8-36.3, Ch.14.

Real estate transactions, certain, distribution of funds, certain; permitted, amends C.17:46B-10.1, Ch.234.

Supplemental realty transfer fee; established, C.46:15-7.1, amends C.46:15-6 et al., Ch.113.

SCHOOLS

- Boards of Education, establishment of tax-sheltered deferred compensation plans under section 457 for employees; permitted, amends N.J.S.18A:66-127 et al., Ch.155.
- Budget cap, local, school districts, temporary exception for security costs, certain; provided, C.18A:7F-5b, amends C.40A:4-45.3 et seq., Ch.92.
- Bus drivers, screening procedures, certain; increased, C.39:3-10.32, amends C.18A:6-7.1c et al., Ch.66.
- Core curriculum content standards for technology, adoption; required, C.18A:7F-4.1 et seq., Ch.68.
- Domestic violence, child abuse education, instruction; permitted, C.18A:35-4.23, Ch.46.
- "Ergonomics in Education Study Commission"; established, Ch.58.
- Fund for support of free public schools, school bond reserve requirements, certain; changed, amends N.J.S.18A:56-16 et al., Ch.118.
- Governor's annual budget message to Legislature, submission of proposed budgets from Abbott districts, deadline; extended, C.18A:7F-5c, amends C.52:27B-20 et al., Ch.275.
- "Governor's Annual Educational Services Professionals Recognition Act," C.18A:29B-1 et seq., Ch.216.
- New Jersey Commission-on Holocaust Education, membership; increased, amends C.18A:4A-2, Ch.288.
- Public school district, borrowing between June 22 and June 30 of budget year, certain circumstances; permitted, C.18A:22-44.2, Ch.97.
- Pupil transportation contracts, annual extensions, provision for exemption from advertising; clarified, amends N.J.S.18A:39-3, Ch.69.
- Reclassification of school district, ballot question concerning, frequency; limited, amends N.J.S.18A:9-4 et seq., Ch.102.
- School breakfast program, participation by certain schools; required, C.18A:33-9 et seq., Ch.4.
- School budget, election calendar, Commissioner of Education, authority to change; clarified, amends C.19:60-1, Ch.20.
- School buses; driver required when pupil present, C.18A:39-26 et seq., Ch.19.
- School buses, smoking; prohibited, amends N.J.S.2C:33-13, Ch.233.
- School construction management services, prequalification of certain persons performing; required, C.18A:18A-27.1, Ch.302.
- School district bonds, laws concerning; revised, electronic bid proposals; permitted, amends N.J.S.18A:24-16 et al., Ch.264.
- "School Employees Contract Resolution and Equity Act," C.34:13A-31 et seq., Ch.126.

SCHOOLS (Continued)

Yearbook photographers, use of others; permitted, C.18A:18A-49.3, Ch.313.

SENIOR CITIZENS

Multiple dwellings, age-restricted, filing evacuation plan with municipality; required, C.52:27D-224.2, amends C.52:27D-224.1 et al., Ch.53.

Programs, certain, errors in estimating income for eligibility, laws concerning; changed, C.30:4D-21.4 et al., Ch.281.

Senior Property Tax Freeze Protection Act, homestead property tax reimbursement, filing deadline; extended, amends C.54:4-8.70 et seq., Ch.30.

Shower rails in senior rental projects, certain; required, C.55:14K-7.1, Ch.101.

SOLID WASTE

Solid waste disposal, certain, criminal penalties, fines; imposed, C.13:1E-9.6, amends C.13:1E-3 et al., Ch.231.

STATE GOVERNMENT

Executive Commission on Ethical Standards, public membership; two added, amends C.52:13D-21, Ch.160.

Fees, penalties, various; established, increased, C.24:2-9 et al., amends R.S.34:7-3 et al., Ch.117.

"Fire Service Resource Emergency Deployment Act," C.52:14E-11 et seq., Ch.28.

Governor's annual budget message to Legislature, submission of proposed budgets from Abbott districts, deadline; extended, C.18A:7F-5c, amends C.52:27B-20 et al., Ch.275.

Handicapped access, public buildings, multi-family dwellings, requirements; changed, amends C.10:5-12.4 et al., Ch.72.

Highbush blueberry, New Jersey State Fruit; designated, C.52:9A-9, Ch.245.

Immunity for public entities, employees relative to actions in response to CBR agents; provided, C.59:6-8 et seq., Ch.51.

Immunity, indemnification for entities participating in structured financing transactions with State; authorized, amends C.52:31C-4 et al., Ch.106.

New Jersey Human Relations Council, method of adopting bylaws, elections; modified, amends C.52:9DD-8, Ch.201.

New Jersey Motor Vehicle Commission established; DMV abolished, C.39:2A-1 et al., amends C.17:29A-35 et al., repeals R.S.39:2-5 et al., Ch.13.

STATE GOVERNMENT (Continued)

- Office of the Child Advocate; established, C.52:17D-1 et seq., Ch.187.
- Real property, improvements, certain; sale, conveyance to Kessler Institute, Ch.7.
- State disability benefits fund, transfer of funds to General Fund; provided, amends C.43:21-47, Ch.109.
- State Health Benefits Commission, membership; increased, amends C.52:14-17.27, Ch.71.
- State poet laureate; position abolished, repeals C.52:16A-26.9, Ch.123.
- State Police, titles, positions, qualifications; listing, postings for certain; required, C.53:1-5.3, Ch.29.
- "State Uniform Construction Code Act," violations, penalties; increased, amends C.52:27D-138, Ch.228.
- "The Public Safety Interoperable Communications Act," C.52:17E-1 et seq., Ch.235.
- "Thomas S. Smith, Sr. State Office Building, 630 Bangs Avenue, Asbury Park; designated, Ch.17.
- Trenton War Memorial, promotion, presentation of programs by State; permitted, amends C.52:18A-212 et seq., repeals C.52:18A-217, Ch.149.

STATUTES

- Criminal history background checks, statutes concerning; revised, C.40:23-54 et al., amends N.J.S.2B:1-3 et al., Ch.199.

TAXATION

- Cigarette tax; increased, amends C.54:40A-8 et al., Ch.115.
- Investment clubs, exemption from partnership fee, payment requirements; provided, amends C.54:10A-15.11 et al., Ch.256.
- Long-term property tax exemptions, laws concerning; revised, C.40A:12A-4.1 et al., amends C.40A:12A-5 et al., Ch.125.
- "Neighborhood Revitalization State Tax Credit Act," provisions, certain; revised, C.52:27D-500, amends C.52:27D-491 et al., Ch.59.
- Outdoor advertising fee; imposed, C.54:4-11.1, amends C.27:5-19, Ch.124.
- Remediation costs, certain, corporation business tax credit; established, C.54:10A-5.33 et seq., Ch.296.
- Rentals between closely-related business entities, exemption from sales and use tax; provided, C.54:32B-8.53, Ch.136.
- Sales tax, payment by vendors, advertising; authorized, amends C.54:32B-14, Ch.42.

TAXATION (Continued)

- Senior Property Tax Freeze Protection Act, homestead property tax reimbursement, filing deadline; extended, amends C.54:4-8.70 et seq., Ch.30.
- September 11, 2001 terrorist attack victims who died, exemption from New Jersey gross income tax; provided, C.54A:6-30, Ch.9.
- State Hotel, Motel Occupancy fee; established, C.54:32D-1 et al., Ch.114.
- "Tax Lien Financing Corporation Act," authorization for qualified municipalities, C.52:27BBB-66 et seq., Ch.120.
- Veterans' homes, certain, sales from concession stands, exemption from sales and use tax; provided, C.54:32B-8.54, Ch.165.

TOBACCO

- Cigarette tax; increased, amends C.54:40A-8 et al., Ch.115.
- School buses, smoking; prohibited, amends N.J.S.2C:33-13, Ch.233.
- Tobacco Master Settlement Agreement, \$50,000,000 maximum appeal bond to stay execution of judgments; established, C.52:4D-13, Ch.195.
- Tobacco product manufacturers, certain, regulations concerning model statute; enforcement, C.52:4D-4 et seq., Ch.25.

TRANSPORTATION

- Public park access parking lots, certain, use for commuter parking; permitted, C.13:8A-56, Ch.290.

UNEMPLOYMENT COMPENSATION

- Unemployment insurance, payroll taxes, certain; redirected to health care subsidy fund, regulations; changed, amends C.26:2H-18.58 et al., Ch.107.

VALIDATING ACTS

- Marriages, certain, solemnized by unauthorized persons; validated, Ch.49.
- School district bonds, proceedings, Ch.70.

WATER SUPPLY

- Landfill sites, certain, discharge of water, certain, into publicly owned treatment works; prohibited, remediation related to radionuclides; required, C.58:10A-6.4 et al., Ch.196.
- Private well test results at seasonal rental properties, posting as alternative notice; permitted, amends C.58:12A-32, Ch.236.
- State water supply lands, unused, certain, identification, recommendation for use in Statewide plan; required, C.58:1A-13.1 et seq., amends C.58:1A-3 et al., Ch.251.

WEAPONS

Firearm possession, persons convicted of certain domestic violence offenses; prohibited, C.2C:25-21.1, amends C.2C:25-21 et al., Ch.277.

Juvenile delinquents, certain, purchase of handgun, possession of firearms purchaser identification card; prohibited, amends N.J.S.2C:58-3, Ch.73.

Nuclear plant guards, possession of firearms, ammunition, certain; authorized, amends N.J.S.2C:39-3 et al., Ch.168.

WORKERS' COMPENSATION

Occupational disease claims, certain, compensation, benefit rates for surviving dependents, laws; changed, C.34:15-33.3, amends R.S.34:15-13, repeals R.S.34:15-33, Ch.253.